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*Repts. Ct*

# TRANSCRIPT OF RECORD

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Supreme Court of the United States

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OCTOBER TERM, 1947

No. 69

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PANHANDLE EASTERN PIPE LINE COMPANY,  
APPELLANT,

vs.

THE PUBLIC SERVICE COMMISSION OF INDIANA,  
ET AL.

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APPEAL FROM THE SUPREME COURT OF THE STATE OF INDIANA

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FILED APRIL 18, 1947.

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[fol. 1]

**IN CIRCUIT COURT OF RANDOLPH COUNTY, STATE  
OF INDIANA**

No. 5440

**PANHANDLE EASTERN PIPE LINE COMPANY, Plaintiff,**

**VS.**

**THE PUBLIC SERVICE COMMISSION OF INDIANA, LEROY E.  
YODER, Lawrence E. Carlsen, and Lawrence W. Cannon,  
as Members of The Public Service Commission of Indi-  
ana, Defendants,**

**COMPLAINT TO SET ASIDE, VACATE, AND ENJOIN THE ENFORCE-  
MENT OF CERTAIN ORDERS OF THE PUBLIC SERVICE COMMISS-  
SION OF INDIANA**

Plaintiff in the above-entitled cause complains of the  
defendants, and for cause of action alleges:

1. Plaintiff is a corporation organized and existing under the laws of the State of Delaware, with its principal executive offices in Kansas City, Missouri, and Chicago, Illinois.
2. Panhandle owns and operates certain pipe lines extending from Texas and Kansas through the States of Oklahoma, Kansas, Missouri, Illinois, Indiana, into Ohio and Michigan, in which it transmits natural gas produced or purchased by it, and sells the same principally to local distributing companies for resale and to industrial consumers. Plaintiff neither produces nor purchases any of [fol. 2] such gas in the State of Indiana and neither transports in its pipe lines, or sells, gas produced in said State.
3. Plaintiff does not sell gas generally to the public and has never held itself out as a common carrier or public utility. All of its sales to local distributing companies for resale and to industrial consumers are made under special individual contracts. It has no charter power to act as a public utility and is authorized to do business in Indiana only as a private corporation and not as a public utility.
4. Local distributing companies are supplied with natural gas by means of laterals running off of plaintiff's main pipe

lines. Such gas is reduced in pressure by facilities owned by plaintiff before entering such laterals, and in making deliveries thereof to such distributing companies plaintiff maintains regulators at its town border metering stations, and before such delivery, reduces the pressure of such gas to such pressure as the distributing companies desire to meet operating conditions in their respective systems.

5. Prior to May 11, 1942, plaintiff neither sold nor delivered such gas to consumers of any character in the State of Indiana, except that it supplied gas for residential purposes for a moderate charge to seven of its employees living in company-owned houses located on plaintiff's property. It has never sold, and does not sell, in the State of Indiana any gas to residential or commercial consumers as such. On May 11, 1942, plaintiff commenced the sale of natural gas directly to Anchor-Hocking Glass Corporation, a Delaware corporation, for consumption in the manufacture [fol. 3] of glass containers in a plant adjacent to the City of Winchester, County of Randolph, Indiana, under a written contract entered into at plaintiff's executive office at Kansas City, Missouri, under which it has since supplied, and now supplies, said corporation with natural gas transmitted from outside the State of Indiana, for the purpose and with the intent that gas so transported in the quantities sold to Anchor-Hocking shall be delivered to it. Prior to March 31, 1943, said gas was transported by Michigan Gas Transmission Company, a Delaware corporation, which then owned the facilities hereinafter described, by means of which such gas was delivered to Anchor-Hocking. Prior to March 31, 1943, plaintiff acquired all the outstanding capital stock and securities of Michigan Gas Transmission Company, and on said date caused said Company to be liquidated and acquired ownership of said facilities for the direct delivery of gas to Anchor-Hocking Glass Corporation hereinafter described. Since March 31, 1943, plaintiff has delivered, and is now delivering, natural gas sold under said contract of May 11, 1942, directly to Anchor-Hocking Glass Corporation, in the manner hereinafter described.

6. A portion of the transmission line owned by plaintiff runs from Muncie, Indiana, in a southeasterly direction to a point in Ohio near the Indiana-Ohio state line. At a point in said line approximately seven miles south of the City

of Winchester, Indiana, a six-inch lateral or branch gas transmission line, hereinafter called "Winchester line," extends north from said main line to a point in Randolph County, Indiana, adjacent to the City of Winchester. Adjacent to the northeast corner of the corporate limits of [fol. 4] Winchester, in Randolph County, Indiana, plaintiff owns two meter houses located approximately 400 feet apart, both of which are on property owned by Anchor-Hocking Glass Corporation, in which are housed regulators and meters owned by plaintiff and used respectively in deliveries to Anchor-Hocking Glass Corporation and to Indiana-Ohio Public Service Company, a distributing company, which resells gas to Winchester, Portland, Union City, Indiana, and Union City, Ohio. A branch of the Winchester line runs into each meter house. In each of said meter houses the pressure of the gas is reduced in substantially the same manner. Anchor-Hocking Glass Corporation takes delivery at the outlet side of one of said meter houses, and Indiana-Ohio Public Service Company takes delivery at the outlet side of the other of said meter houses. All gas transmitted through the Winchester line is sold and delivered either to Anchor-Hocking Glass Corporation or Indiana-Ohio Public Service Company, and the quantity thereof delivered to Anchor-Hocking Glass Corporation for its consumption is customarily ten times the amount delivered annually to Indiana-Ohio Public Service Company for resale as aforesaid. The products manufactured by Anchor-Hocking Glass Corporation with the use of said natural gas are largely sold and shipped in interstate commerce throughout the United States. Prior to the entry of the order of the defendant, Public Service Commission, hereinafter described, on November 21, 1945, plaintiff had not at any time, sold or delivered gas to any industrial consumer of the State of Indiana, except Anchor-Hocking Glass Corporation as aforesaid.

[fol. 5] 7. The defendant, The Public Service Commission of Indiana, is an administrative body created by the laws of the State of Indiana, and the defendants LeRoy Yoder, Lawrence E. Carlsen, and Lawrence W. Cannon, are the duly appointed, qualified and acting members thereof.

8. On or about the 13th day of October, 1944, the defendant, The Public Service Commission of Indiana, issued and

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delivered to plaintiff a copy of the following purported order:

“STATE OF INDIANA  
PUBLIC SERVICE COMMISSION OF INDIANA

Cause No. 16741

In the matter of the investigation by the Commission in respect of the distribution by Panhandle Eastern Pipe Line Company, as a public utility, of natural gas to consumers within the State of Indiana.

Approved: October 13, 1944.

Public Service Commission of Indiana, having summarily upon its own motion investigated the matter of the operations of Panhandle Eastern Pipe Line Company in distributing natural gas as a public utility within the State of Indiana, has reason to believe that said Panhandle Eastern Pipe Line Company has heretofore, without the approval of this Commission, purported to take over and acquire certain property and franchise rights used and useful in rendering public utility natural gas service to consumers within the State of Indiana, that said Panhandle Eastern Pipe Line Company has heretofore and is now engaged, as a public utility, in the retail sale of natural gas within the State of Indiana, that said Panhandle Eastern Pipe Line Company has not heretofore had and does not now have on file with and approved by this Commission any schedule of rates, rules and regulations covering sales of natural gas by it to consumers in the State of Indiana, that said Panhandle Eastern Pipe Line Company has not filed with this Commission any annual or other reports in respect of its operations within the State of Indiana, and that said Panhandle Eastern Pipe Line Company may in various respects be violating provisions of the Public Service Commission Act and orders of this Commission applicable to it and its operations.

And it appearing to this Commission from its said investigation that sufficient grounds exist to warrant a formal hearing being ordered as to the matters heretofore investigated, this Commission hereby fur-

[fol. 6] nishes to said Panhandle Eastern Pipe Line Company, pursuant to the requirements of Section 62 of the Public Service Commission Act, this statement notifying said Panhandle Eastern Pipe Line Company of the matters under investigation, which are as follows, to-wit:

1. The facts and circumstances under which said Panhandle Eastern Pipe Line Company has purported to acquire and hold any property, or franchise or other rights, used or useful in or in connection with sales of natural gas to the Anchor-Hocking Glass Corporation, a consumer of natural gas within the State of Indiana, or to any other consumer or consumers of natural gas within the State of Indiana.

2. The nature, period and extent of natural gas service by said Panhandle Eastern Pipe Line Company to said Anchor-Hocking Glass Corporation, or any other consumer of natural gas within the State of Indiana, and the right, if any, of said Panhandle Eastern Pipe Line Company to render any such service.

3. The matter of the failure of said Panhandle Eastern Pipe Line Company to file with this Commission any tariffs, rules and regulations appertaining to natural gas service to such consumer or consumers as it serves within the State of Indiana.

4. The matter of the failure of said Panhandle Eastern Pipe Line Company to file with this Commission an annual report for the calendar year 1942 and the calendar year 1943, or either of them.

5. The matter of the failure of said Panhandle Eastern Pipe Line Company to file with this Commission an original cost report appertaining to its property used and useful in rendering natural gas service to consumers within the State of Indiana.

6. Whether or not said Panhandle Eastern Pipe Line Company is a corporation organized under the laws of the State of Indiana.

7. Whether or not said Panhandle Eastern Pipe Line Company now has, and has had at all times while it has been selling natural gas to consumers within the

State of Indiana, an office in the State of Indiana, and has kept thereat all books, accounts, papers and records required by this Commission to be kept within the State of Indiana.

8. Whether or not said Panhandle Eastern Pipe Line Company has failed to keep any book, account, paper or record required to be kept by it under the orders of this Commission or has failed to comply with any direction of this Commission relating to any such book, account, paper or record.

[fol. 7] 9. Whether or not said Panhandle Eastern Pipe Line Company in any other respect is failing or has failed to comply with, abide by and conform with any applicable provisions of the Public Service Commission Act or of the orders and regulations of this Commission.

Dated at Indianapolis, Indiana, this 13th day of October, 1944.

By order of the Public Service Commission of Indiana.

(S.) Hugh W. Abbett. (Seal.)

Attest:

(S.) Glen L. Steckley, Secretary.

Abbett, Cannon and Barnard concur: approved: October 13, 1944.

I hereby certify that the above is a true and correct copy of order as approved.

(S.) Glen L. Steckley."

Thereafter, on or about the 30th day of October, 1944, said defendant notified plaintiff in writing that a formal hearing with reference to the matters contained in said purported order of October 13, 1944, would be held on November 20, 1944, and ordered that plaintiff appear at said time and place and produce testimony and evidence consisting of its books, records, contracts and documents pertaining to the matters asserted in said purported order of October 13, 1944, to be under investigation.

9. Plaintiff filed no formal response to said purported order of October 13, 1944, but Subdivision I of a Stipulation [fol. 8] of Facts entered into between plaintiff, the Public Counsellor of Indiana, and certain Indiana distributing

companies, permitted by the defendant The Public Service Commission of Indiana to intervene, and filed in said cause on January 9, 1945, prior to any hearing thereof, was in the language following, to-wit:

"It is agreed by and between the parties to this stipulation that Panhandle Eastern Pipe Line Company asserts that any action or order of the Public Service Commission of Indiana herein purporting to regulate, interfere with, or otherwise affect the sale and delivery by Panhandle Eastern Pipe Line Company to Anchor-Hocking Glass Company of natural gas transported by Panhandle in interstate commerce would unduly and unlawfully burden interstate commerce in violation of Article 1, Section 8(3) of the Constitution of the United States, and that if sections 54-112 et seq. Burns Indiana Statutes Annotated, 1933/ or any other Indiana statute, is construed to purport to authorize said commission to regulate, interfere with or otherwise affect such sale and delivery, such statutes as so construed are unconstitutional and void because in violation of Article 1, Section 8(3) of the Constitution of the United States, and denies:

(a) that it sells natural gas in Indiana except as a part of interstate commerce;

(b) that it is engaged in intrastate commerce in the State of Indiana;

(c) that it has transacted or is transacting within the State of Indiana any business as a public utility within said state;

(d) that the sale and delivery of natural gas transported by it in interstate commerce directly to an industrial consumer is subject to the jurisdiction of the Public Service Commission of Indiana;

(e) that it is in any manner subject to the jurisdiction of said commission;

(f) that said commission has any right, power or authority to institute this proceeding against it;

[fol. 9] (g) that the statutory provisions under which this action is instituted (Secs. 54-112, et seq. Burns Indiana Statutes Annotated, 1933) authorizing

investigation by said commission of matters relating to any public utility, have any application to it or its business;

(h) that it is under any obligation to comply with any Indiana statute or any order of said commission relating to public utilities within the State of Indiana; and

(i) that its business or any part thereof is subject to regulation of any character by said commission."

10. Thereafter, and prior to any hearing of evidence in said proceeding, plaintiff filed therein written objections to said proceeding, in the following language, to-wit:

"Comes now, Panhandle Eastern Pipe Line Company, and objects to any further proceeding in this cause and objects to the exercise or purported exercise by the Public Service Commission of Indiana of any jurisdiction with respect thereto and as grounds for said objections and each of them, says:

1. That any action or order of the Public Service Commission of Indiana herein purporting to regulate, interfere with, or otherwise affect the sale and delivery by Panhandle Eastern Pipe Line Company to Anchor-Hocking Glass Company of natural gas transported by Panhandle in interstate commerce would unduly and unlawfully burden interstate commerce in violation of Article I, Section 8(3) of the Constitution of the United States.

2. That if Section 54-1 *et seq.*, Burns Ind. Stat. Ann. 1933, or any other statute of the State of Indiana, is construed as purporting to authorize the Public Service Commission of Indiana to regulate, interfere with, or otherwise affect the sale and delivery by Panhandle Eastern Pipe Line Company to Anchor-Hocking Glass Company of natural gas transported by Panhandle in interstate commerce, such statutes as so construed are unconstitutional and void because they are in violation of Article I, Section 8(3) of the Constitution of the United States.

3. That the statutory provisions under which this proceeding is instituted. (Sections 54-112, *et seq.*, Burns,

Ind. Stat. Ann. 1933) authorizing investigation by the Public Service Commission of Indiana of matters relating to any public utility have no application to Panhandle Eastern Pipe Line Company or its business.

[fol. 10] 4. That the purported order issued herein by Public Service Commission of Indiana on October 13, 1944, for an investigation concerning the matters therein designated, was unauthorized and void.

5. That the purported order issued herein by the Public Service Commission of Indiana on October 30, 1944, requiring Panhandle Eastern Pipe Line Company to appear at a hearing and produce testimony and evidence consisting of its books, records, contracts and documents pertaining to the matters under investigation as set out in said purported order of October 13, 1944, was unauthorized and void.

6. That the Public Service Commission of Indiana has no jurisdiction over the sale and delivery of natural gas sold and delivered in interstate commerce directly to industrial consumers within the State of Indiana.

7. That Panhandle Eastern Pipe Line Company is not transacting, and has never transacted, any business within the State of Indiana as a public utility within said State."

11. With reference to the matters alleged in said purported Order of October 13, 1944, plaintiff says:

(a) No franchise from the State of Indiana authorizing the sale and delivery of natural gas to any industrial consumer in interstate commerce, has been or can lawfully be acquired by it from the State of Indiana, or any agency thereof. Such sales and deliveries at all times have been, and will continue to be component parts of interstate commerce and neither the State of Indiana, nor the Public Service Commission of Indiana has any right, power or authority to require plaintiff to obtain or to attempt to obtain any such franchise in order to sell and deliver such gas. Any attempt on the part of defendants, or any of them, to require such franchise or to interfere with the business of plaintiff because of the lack of such franchise, is unauthorized by the laws of the State of Indiana, and if

any statute of said state is construed to purport to authorize [fol. 11] the same, such statute as so construed and applied to the business of plaintiff is invalid as contrary to Article I, Sect. 8(3) of the Constitution of the United States.

(b) Plaintiff has at no time filed, or had on file with, or approved by, the Public Service Commission of Indiana, any schedule of rates, rules, and regulations covering sales of natural gas by it to consumers in the State of Indiana. No valid law of the State of Indiana requires the filing with, or approval by, said Commission of any schedule of rates, rules, or regulations covering the direct sale of natural gas in interstate commerce to industrial consumers in Indiana, and any statute of said State construed to purport to require such filing or approval would, if applied to the business of plaintiff, unlawfully regulate and burden interstate commerce contrary to Article I, Section 8(3) of the Constitution of the United States.

(c) Plaintiff has at no time filed with the Public Service Commission of Indiana any annual or other reports in respect of any of its operations within the State of Indiana. The laws of the State of Indiana do not require annual or other reports of operations wholly in interstate commerce to be filed with the Public Service Commission of Indiana, and any law of the — Indiana construed to purport to require the filing of any such report would, if applied to the business of plaintiff, unlawfully regulate and burden interstate commerce contrary to Article I, Section 8(3) of the Constitution of the United States.

(d) Plaintiff has at no time filed with the Public Service Commission of Indiana any original or other cost report [fol. 12] appertaining to its property used and useful in rendering natural gas service to consumers in Indiana. The laws of Indiana do not require the filing of any such report with reference to property used wholly in interstate commerce and any law of this state construed to purport to require the filing of any such report would, if applied to the business of plaintiff, unlawfully regulate and burden interstate commerce contrary to Article I, Section 8(3) of the Constitution of the United States.

(e) Plaintiff has not purported to keep books, accounts, papers, or records in the manner required under the orders

and directions of the Public Service Commission of Indiana for public utilities subject to the jurisdiction thereof and is not required by any valid law of the State of Indiana so to keep its records pertaining solely to transactions in interstate commerce and any law of the State of Indiana construed as purporting to require the keeping of its books, accounts, papers, or records in compliance with orders or directions of the Public Service Commission of Indiana would, if applied to the business of plaintiff, unlawfully regulate and burden interstate commerce contrary to Article I, Section 8(3) of the Constitution of the United States.

(f) Plaintiff does not now have and has at no time had an office in the State of Indiana where any books, accounts, papers, or records pertaining to its business are kept, and none of said books, accounts, papers, or records are kept within the State of Indiana. All of its operations and business, including its operations and business in the State of Indiana, are directed, managed, and controlled from its [fol. 13] principal executive offices in Kansas City, Missouri, and Chicago, Illinois, and all of its books, accounts, papers and records are kept at one or the other of said executive offices. No valid law of the State of Indiana requires it to maintain an office in Indiana where books, accounts, papers, and records pertaining wholly to its business in interstate commerce are kept, or to keep such books, accounts, papers, and records within the State of Indiana, and any law of the State of Indiana construed to purport to require the keeping of such books, accounts, papers, and records at an office or elsewhere within the State of Indiana, would, if applied to the business of plaintiff, unlawfully regulate and burden interstate commerce contrary to Article I, Section 8(3) of the Constitution of the United States.

(g) Plaintiff is not now and has at no time been a public utility subject to the jurisdiction of the defendant commission, and any statute of Indiana construed as purporting to subject plaintiff to such jurisdiction unlawfully burdens interstate commerce in violation of Article I, Section 8(3) of the Constitution of the United States.

12. (a) On or about the 14th day of December, 1944, and while said purported proceeding was pending before defendant, the Public Service Commission of Indiana, plain-

tiff entered into a written contract with E. I. DuPont DeNemours & Company, a Delaware corporation, to sell and deliver natural gas to said corporation at its plant located at Fortville, Indiana. Prior to the execution of said contract, but after the commencement of said purported proceeding on October 13, 1944, plaintiff filed with the Federal [fol. 14] Power Commission its application under the Federal Natural Gas Act for a certificate of convenience and necessity to construct a lateral line from one of its main lines to a point near the Town of Fortville, Indiana, and certain facilities incidental thereto, to transport in interstate commerce, sell, and deliver natural gas to two Indiana utilities for resale and to said E. I. DuPont DeNemours & Company for consumption at its plant adjacent to the Town of Fortville, Indiana.

(b) On June 5, 1945, said Federal Power Commission entered its order in said proceeding authorizing the construction of said line to Fortville, but deferring action with reference to the use of said facilities and the construction of additional facilities for the sale and delivery of gas to the DuPont Company on the ground that it was unnecessary to determine such issue so long as plaintiff was prevented from delivering gas to said Company by an order of the War Production Board.

(c) On June 29, 1945, plaintiff filed in said proceeding before the Federal Power Commission an application for a modification of said order of June 5, 1945, showing that said order of the War Production Board had been modified so as to permit plaintiff to supply gas to the DuPont Company if authorized by the Federal Power Commission, to use the facilities to be constructed under said order of June 5, 1945 therefor. The defendant herein, the Public Service Commission of Indiana, which had theretofore intervened in said proceeding before the Federal Power Commission, filed therein an answer on July 9, 1945, object- [fol. 15] ing to modification of said order of June 5, 1945, on the asserted ground that the proposed sale direct to the DuPont Company was wholly intrastate commerce in which plaintiff had no right to engage without compliance with the laws of Indiana relative thereto and that plaintiff had secured no Certificate of Convenience and Necessity from the Public Service Commission of Indiana to serve said DuPont Company as proposed, which was claimed by said

defendant Commission to be required by Chapter 53, Acts of 1945, of Indiana, effective as of February 26, 1945. Said answer asked that said requested modification be denied by the Federal Power Commission, or in the alternative, that it be conditioned on securing from the defendant, The Public Service Commission, a Certificate of Convenience and Necessity to supply said gas to the DuPont Company.

(d) At the time of filing said answer, said defendant knew that Section 54-603, Burns Ann. Stat. 1933 of the laws of Indiana prohibits the granting to any foreign corporation of any license, permit, or franchise to own, operate, manage, or control any plant or equipment of any public utility in this state, and that it had no right, power, or authority to grant such Certificate of Convenience and Necessity to plaintiff, a Delaware Corporation, if it applied therefor. Consequently, the claim of said defendant, asserted in said proceeding, was in substance that the plaintiff could not lawfully perform its contract with the DuPont Company.

(e) On July 10, 1945, said Federal Power Commission, notwithstanding the objection of said defendant herein, entered an order modifying said order of June 5, 1945, and [fol. 16] granting to plaintiff a Certificate of Public Convenience and Necessity, authorizing plaintiff's transportation and service to DuPont subject to the jurisdiction of said Federal Power Commission, which order of modification further specified that it should be without prejudice to the exercise of any jurisdiction which defendants may have to regulate the sale or service proposed to be rendered. Since the modification of said order, plaintiff has caused to be constructed the facilities authorized therein, but had not sold or delivered gas to the DuPont Company prior to the date of the order of the Public Service Commission of Indiana herein sought to be set aside, for the sole reason that said Company was not yet ready for the delivery of such gas. The facilities for the delivery of gas to the DuPont Company under said contract consist of a metering and regulator station with a suitable meter and regulator installed therein by means of which such gas from the Fortville branch line is reduced in pressure for delivery to DuPont at the outlet side of such station in a manner similar to that in which delivery is made to Anchor-Hocking Glass Corporation as aforesaid.

(f) Said defendant, the Public Service Commission of Indiana, included all of the aforesaid matters relating to the sale and delivery of gas in interstate commerce to said DuPont Company in its purported investigation, and entered a purported order with reference thereto as herein-after set forth.

13. On the 21st day of November, 1945, the defendants entered in said cause instituted by said order of October [fol. 17] 13, 1944, a purported order and opinion, a copy of which is attached hereto, made part hereof, and marked Exhibit A. Said opinion asserts that the distribution by plaintiff in Indiana of natural gas direct to consumers is subject to regulation by said defendant Commission under the laws of Indiana. The portion thereof denominated Order, is in words and figures as follows, to-wit:

"It is therefore ordered by Public Service Commission of Indiana that each and all of the objections made by Panhandle Eastern Pipe Line Company, the respondent in this cause, to any of the evidence offered in this cause (except such objections as have heretofore been specifically and finally sustained by the Commission) shall be, and the same and each of them are hereby, overruled; and that all such evidence objected to shall be and is hereby received in evidence in this cause.

It is further ordered that said Panhandle Eastern Pipe Line Company shall, within twenty (20) days after receipt by it of a copy of this order, file with the Bureau of Tariffs of this Commission, in the form prescribed by this Commission, tariffs covering rates, rules and regulations appertaining to any and all sales of natural gas by it direct to ultimate consumers within the State of Indiana.

It is further ordered that said Panhandle Eastern Pipe Line Company shall, within sixty (60) days after receipt by it of a copy of this order, file with this Commission an annual report, in the prescribed form, for each of the calendar years 1942, 1943 and 1944, and shall hereafter, when and as the same become due and so long as it continues to distribute gas direct to any consumer in Indiana, file with this Commission, on the prescribed form, an annual report for each succeeding year.

It is further ordered that said Panhandle Eastern Pipe Line Company shall, within sixty (60) days after the receipt by it of a copy of this order, file with this Commission copies (certified by one of its fiscal officers as true copies) of (a) each and all statements appertaining to its property in such form as filed by it with the Federal Power Commission under and pursuant to Order No. 73 of said commission, adopted April 9, 1940, captioned "Order Requiring Submission of Supplemental Data in Connection with Gas Plant Instruction 2-D of the Uniform System of Accounts under the Natural Gas Act," and (b) each and all journal entries [fol. 18] or proposed journal entries filed by it with said Federal Power Commission under and pursuant to the requirements of Subdivision B of Account No. 391 "Gas Plant Purchased" of the "Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act" prescribed by said commission, or of Subdivision B of Account No. 392 "Gas Plant Sold" of said Uniform Classification of Accounts.

It is further ordered that this Commission reserve for subsequent determination in this investigation the matter of what, if any, additional reports and information in respect of the property or operations of said Panhandle Eastern Pipe Line Company this Commission should require to be filed with it by said company.

It is further ordered that this Commission reserve for subsequent determination in this investigation the steps, if any, to be taken by this Commission if Panhandle shall, without first securing a Necessity Certificate under the provisions of Section 97A of the Public Service Commission Act, commence the supplying of natural gas direct to any consumer in Indiana who was not so served by it on February 26, 1945, and who is located in a rural area as defined in said act.

It is further ordered that the secretary of this Commission shall promptly after the entry of this order (a) mail, first class and registered mail, to said Panhandle Eastern Pipe Line Company at its principal office in Indiana, 601 Illinois Building, 17 West Market Street, Indianapolis 4, Indiana, and also at its principal executive office at 135 South LaSalle Street, Chicago 3, Illinois, copies of this order and of the rules and regu-

lations of this Commission governing the construction and filing of schedules of rates, rules and regulations by public utilities other than interurban railways, (b) mail, as printed matter, postage prepaid and insured, to said Panhandle Eastern Pipe Line Company at its said office in Chicago, Illinois, six sets of the form of annual report prescribed by this Commission, and (c) mail, as first class mail and postage prepaid, to counsel of record for said Panhandle Eastern Pipe Line Company, and to each of the other parties to this proceeding and their respective counsel of record, copies of this order; and that said secretary shall forthwith thereafter file in this cause his certificate of such mailings.

It is further ordered that said Panhandle Eastern Pipe Line Company shall, on or before twenty (20) days after the date of this order, pay into the Treasury of the State of Indiana, through the Secretary of this Commission, the sum of \$23.59, said amount being the expenses incurred by this Commission in this investigation (including cost of publication of notices of hearing)."

[fol. 19] On about the — day of December, 1945, the defendant, Public Service Commission, modified the second grammatical paragraph of said order by substituting the words "sixty (60) days" for the words "twenty (20) days" therein.

14. On December 15, 1945, plaintiff at the request of the DuPont Company commenced supplying natural gas to such company under said contract. On December 19, 1945, plaintiff filed in said proceeding before the Public Service Commission, its petition to rescind or otherwise modify the grammatical paragraph of said order purporting to "reserve for subsequent determination in said proceeding the steps, if any, to be taken by this Commission if Panhandle should, without first securing a Necessity Certificate under the provisions of 97A of the Public Service Commission Act, commence the supplying of natural gas direct to any consumer in Indiana who was not so served on February 26, 1945, and who is located in a rural area as defined in said Act" so that the same would not constitute an implied threat to attempt to interfere with and unlawfully burden plain-

tiff's sale and delivery to said DuPont Company in interstate commerce. Said Commission to this date has taken no action with reference to said petition of plaintiff.

15. Plaintiff is adversely affected by said order, and each of the separate paragraphs thereof, and said order and each of said paragraphs are unlawful for the following reasons, and each of them:

(a) Plaintiff is engaged wholly in interstate commerce in the State of Indiana, and not otherwise, and Acts 1913, ch. 76, §61, p. 167 et seq. (Burns Ann. Stat. 54-412, et seq.), under which said proceeding was instituted, do not purport [fol. 20] to authorize an investigation by defendant, the Public Service Commission of Indiana, of any matters relating to plaintiff or its business, and said defendant Commission had no jurisdiction to institute or entertain such proceeding or to make any order therein with reference to plaintiff or its business. If construed to purport to authorize such investigation, such statutes as applied to plaintiff and its business unlawfully regulate and burden interstate commerce, contrary to Article I, Section 8(3) of the Constitution of the United States, and are void as so applied.

(b) Plaintiff is not a public utility within the meaning of any Indiana statute applicable thereto and neither it nor its business is subject to the jurisdiction of the defendant. The Public Service Commission of Indiana, and said defendant has no right, power, or authority to make or enforce orders with reference to plaintiff or the conduct of its business.

(c) The said purported order of the defendant, the Public Service Commission of Indiana, and each separate paragraph thereof is unlawful because the said defendant was without jurisdiction to issue the same.

(d) The said purported order of the defendant, the Public Service Commission of Indiana, and each separate paragraph thereof unlawfully regulates and burdens interstate commerce in violation of Article I, Section 8(3) of the Constitution of the United States.

(e) The defendant, the Public Service Commission of Indiana, has no right, power, or authority to regulate the rates or service of the plaintiff with reference to its direct

sale and delivery in interstate commerce to Anchor-Hocking Glass Company, or to E. I. DuPont DeNemours & Company. The provisions of said order that plaintiff file with the Bureau of Tariffs of the Public Service Commission of Indiana in the form prescribed by said Commission, do not seek information not otherwise available to the Commission for any authorized purpose, but especially in the light of the opinion of the Commission accompanying the same, said filing is ordered for the sole purpose of attempting to regulate, and as a first step in the regulation of, plaintiff's rates and service relating to the sale and delivery of natural gas in interstate commerce and is an invalid assertion of the right to regulate such rates. No such order is authorized by the statutes of Indiana with reference to the sale and delivery of natural gas in interstate commerce to industrial consumers, and any statute of the State of Indiana construed to purport to authorize such order, if applied to the business of plaintiff, unlawfully regulates and burdens interstate commerce in violation of Article I, Section 8(3) of the Constitution of the United States.

(f) The defendants have no right, power, or authority to require plaintiff to file with the Public Service Commission of Indiana annual reports in the form prescribed by the Commission, or in any other form, so long as it is engaged solely in interstate commerce within the State of Indiana. The Provisions of said order requiring the filing of such reports do not seek information not otherwise available to the Commission for any authorized purpose but especially in the light of the opinion of the Commission accompanying the same, said filing was ordered for the sole purpose of attempting to regulate, and as a preliminary step in the regulation of plaintiff's rates and service relating [fol. 22] to the sale and delivery of natural gas in interstate commerce and constitutes an invalid assertion of the right to regulate such rates. No valid law of the State of Indiana authorizes such requirement with reference to corporation engaged only in the sale and delivery of gas in interstate commerce, and any statute of Indiana construed to purport to authorize the order of the Public Service Commission of Indiana requiring plaintiff to prepare and file such statements annually or otherwise, if applied to plaintiff and its business, unlawfully regulates and burdens

interstate commerce contrary to Article I, Section 8(3) of the Constitution of the United States, and is void as so applied.

(g) The defendants have no right, power, or authority to require plaintiff to file with the Public Service Commission of Indiana copies of, (a) each and all statements appertaining to its property in such form as filed by it with the Federal Power Commission under and pursuant to Order No. 73 of said commission, adopted April 9, 1940, captioned "Order Requiring Submission of Supplemental Data in Connection with Gas Plant Instruction 2-D of the Uniform System of Accounts under the Natural Gas Act," and (b) each and all journal entries or proposed journal entries filed by it with said Federal Power Commission under and pursuant to the requirements of Subdivision B of Account No. 391 "Gas Plant Purchased" of the "Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act" prescribed by said commission, or of Subdivision B of Account No. 392 "Gas Plant Sold" of said Uniform Classification of Accounts.

[fol: 23] The provisions of said order requiring the filing of such statements and journal entries do not seek information not otherwise available to the Commission for any authorized purpose, but especially in the light of the opinion of said Commission accompanying the same, said filings are ordered for the sole purpose of attempting to regulate, and as a preliminary step in the regulation of, plaintiff's rates and service relating to the sale and delivery of natural gas in interstate commerce and constitute an invalid assertion of the right to regulate such rates. No valid law of the State of Indiana authorizes such order, and any statute of Indiana construed as purporting to authorize the same, if applied to plaintiff or its business, unlawfully regulates and burdens interstate commerce, contrary to Article I, Section 8(3) of the Constitution of the United States.

(h) The defendant, Public Service Commission of Indiana, has no right, power, or authority to order the continuation of said purported investigation or reserve for subsequent determination in said purported investigation, the matter of what, if any, additional reports and information in respect of the property or operations of plaintiff in inter-

state commerce they will require to be filed in the future. No valid law of the State of Indiana authorizes such order, and any statute of Indiana construed as purporting to authorize the same, if applied to plaintiff or its business, unlawfully regulates and burdens interstate commerce, contrary to Article I, Section 8(3) of the Constitution of the United States, and takes plaintiff's property without due process of law in violation of the 14th Amendment to the Constitution of the United States.

(i) The defendant, the Public Service Commission of Indiana has no right, power, or authority to prevent plaintiff [fol. 24] in any manner or to any extent from contracting to sell and deliver, and selling and delivering natural gas direct to industrial consumers in interstate commerce by means of facilities, the construction and use of which for said purposes, are authorized by the Federal Power Commission of the United States, and has no right, power or authority to require plaintiff to obtain or attempt to obtain a Certificate of Public Convenience and Necessity therefor under the provisions of Ch. 53 of the Acts of 1945 of the Indiana General Assembly. The purported order of the Commission reserving for subsequent determination in said purported investigation any steps to be taken by said Commission if plaintiff shall "without first securing a Necessity Certificate under the provisions of Section 97A of the Public Service Commission Act, commence the supplying of natural gas direct to any consumer in Indiana not so served by it on February 26, 1945, and located in a rural area as defined in said Act," constitutes an implied threat to interfere with and burden plaintiff's sale and delivery of gas in interstate commerce to E. I. DuPont DeNemours & Company, or at its plant adjacent to Fortville, Indiana which sales commenced on December 15, 1945. Neither Ch. 53 of the Acts of 1945 of the General Assembly of Indiana, nor any other Indiana statute authorizing any action to be taken by the defendant, the Public Service Commission of Indiana, interfering with said sale or the lawful right of plaintiff to make the sale, and any statute of Indiana construed to purport to authorize such order with reference to plaintiff and its business or any action thereunder at [fol. 25] tempting to interfere with or prevent such sale and delivery is, as so construed and applied to plaintiff and its business, an unlawful attempt to regulate and

burden interstate commerce in violation of Article I, Section 8(3) of the Constitution of the United States, and is void as applied to plaintiff.

Wherefore, plaintiff prays that a hearing be had at a time fixed by the Court on a temporary order of injunction, enjoining the defendants, and each of them, from enforcing or attempting to enforce said order of November 21, 1945, or any separate paragraph thereof, pending the final determination of this cause, that on said hearing defendants, and each of them, be enjoined pending such final determination; and that on final hearing said order of the Public Service Commission of Indiana and each paragraph thereof be vacated and set aside, and said order of injunction enjoining the enforcement of said order or any paragraph thereof by the defendants be made permanent, and for all other proper relief.

Bowen, Mendenhall & Hunter; Crumpacker, May, Carlisle & Beame; Barnes, Hickman, Pantzer & Boyd, Attorneys for Plaintiff.

[fol. 26] *Duly sworn to by Leith V. Watkins, jurat omitted in printing.*

[fol. 27] IN CIRCUIT COURT OF RANDOLPH COUNTY

[Title omitted]

#### ANSWER

Come now the defendants in the above entitled cause and for their separate answer to the complaint herein each of them separately says:

1. That they admit the facts alleged in rhetorical paragraphs numbered 1, 2, 4, 7, 9, 10 and 14.

2. That they deny the allegations contained in rhetorical paragraphs 3, 5, and 6 and in rhetorical paragraph 15 and each sub-paragraph thereof.

3. That they admit that the order set forth in rhetorical paragraph No. 8 was issued as therein alleged but deny that said order was in any way specious or not genuine or that it merely purported to be an order and they admit

the other allegations contained in said rhetorical paragraph No. 8.

4. That they deny the allegations contained in rhetorical paragraph No. 11 sub-paragraph (a); that they admit the allegations contained in the first sentence of rhetorical paragraph No. 11 sub-paragraph (b) and deny the allegations contained in the remaining portion of sub-paragraph (b); that they admit the allegations contained in the first [fo 28] sentence of rhetorical paragraph No. 11 sub-paragraph (c) and deny the allegations contained in the remaining portion of said sub-paragraph (c); that they admit the allegations contained in the first sentence of rhetorical paragraph No. 11 sub-paragraph (d) and deny the allegations contained in the remaining portion of said sub-paragraph (d); that they admit the allegation that "plaintiff has not purported to keep books, accounts, papers or records in the manner required under the orders and directions of the Public Service Commission of Indiana for public utilities subject to the jurisdiction thereof" and deny the allegations contained in the remaining portion of rhetorical paragraph No. 11 sub-paragraph (e); that they admit the allegations contained in the first sentence of rhetorical paragraph No. 11 sub-paragraph (f) and deny the allegations contained in the remaining portion of said sub-paragraph (f); and that they deny the allegations contained in rhetorical paragraph No. 11 sub-paragraph (g).

5. That they admit that the contract for delivery to and the use of natural gas by DuPont in rural territory near Fortville, Indiana, referred to in rhetorical paragraph No. 12 (a) was executed at the time mentioned but they deny that the order referred to was in any way specious or not genuine or that it merely purported to be an order; that they admit that the proceedings before the Federal Power Commission and the order thereon referred to in rhetorical paragraph No. 12 sub-paragraphs (a) and (b) to secure the right to construct facilities for the transportation of natural gas were instituted under Section 7 (c) of the Federal Natural Gas Act (Section 717 f (c) U. S. C. A.) and they deny the rest of the allegations contained in said sub-paragraphs (a) and (b); that they admit the allegations contained in rhetorical paragraph No. 12 sub-paragraph (c); that they deny the allegations contained in rhetorical paragraph No. 12 (d); that they admit the

[fol. 29] allegations contained in rhetorical paragraph No. 12 sub-paragraph (e) to the effect that the petition referred to in rhetorical paragraph No. 12 subsections (a) and (b) to transport gas to DuPont under Section 7 (c) of the Federal Natural Gas Act was granted so far as the Federal Power Commission was concerned but stipulated that "this order is without prejudice to the authority of the Indiana Commission (Public Service Commission of Indiana) in the exercise of any jurisdiction which it may have over the sale or service proposed to be rendered by Panhandle Eastern to DuPont"; that they admit that the proposed sale of natural gas to DuPont was considered by the Commission in its investigation, finding and order herein as alleged in rhetorical paragraph No. 12 sub-paragraph (f).

6. That they admit that Exhibit A attached to the complaint, a printed copy of which contains 86 pages, was issued as alleged in rhetorical paragraph 13 and deny the remaining allegations contained in said rhetorical paragraph No. 13.

James A. Emmert, Attorney General of Indiana,  
 Frank E. Coughlin, First Assistant Attorney General,  
 Urban C. Stever, Deputy Attorney General,  
 Karl J. Stipher, Deputy Attorney General; Attorneys for Public Service Commission, defendant,  
 and Members.

[fol. 30] IN CIRCUIT COURT OF RANDOLPH COUNTY

[Title omitted]

PETITION FOR LEAVE TO INTERVENE

Comes now Indiana Gas & Water Company, Inc., an Indiana corporation, and represents and shows to the court that it is interested in the above entitled cause and is entitled to intervene in said cause and to participate in said proceedings as a party defendant and to have all the rights of a party defendant in such action including the right to appeal, for the following reasons:

1. Indiana Gas & Water Company, Inc., is a public utility as that term is defined in the Public Service Commission Act,

and is engaged in rendering, among other services, natural gas utility service in and adjacent to 30 municipalities and 6 unincorporated communities within the State of Indiana. It renders such service to approximately 53,900 residential, commercial and industrial consumers in said territory. A substantial portion of the natural gas distributed by Indiana Gas & Water Company, Inc. is purchased by it from Panhandle Eastern Pipe Line Company and the lines and facilities of said Panhandle Eastern Pipe Line Company extend across the territory served by Indiana Gas & Water Company, Inc.

2. The above proceeding relates directly to the question of the power and authority of the Public Service Commission of Indiana to regulate the distribution and sale of natural gas to ultimate consumers in Indiana, including industrial consumers. Indiana Gas & Water Company, Inc., a public utility subject to the jurisdiction and regulation of said commission in the distribution of natural gas, has a direct interest in said issue and will be directly affected by the determination thereof.

3. Intervention or participation by Indiana Gas & Water Company, Inc. in these proceedings is in the public interest in that the interests of the various classes of Indiana consumers served by Indiana Gas & Water Company, Inc. and the investors in the securities of said Indiana Gas & Water Company, Inc. ~~will be~~ affected by the results of these proceedings and by the determination of whether or not the present and proposed activities of the plaintiff are proper subjects for regulation by the Public Service Commission of Indiana and the decision of the fundamental issues involved in these proceedings will have a direct bearing on the operations of Indiana Gas & Water Company, Inc. and its natural gas utility service in the areas in Indiana served by it.

4. After the institution of the proceedings before the Public Service Commission of Indiana which are referred to in the above entitled cause and which resulted in the order of said commission which is the subject of attack in this cause, your petitioner became the successor in interest of all the public utility gas business and properties of Public Service Company of Indiana, Inc., which latter company was by order of said Public Service Commission

permitted to intervene and to participate actively in the introduction of evidence, the examination of witnesses, the filing of briefs and the presenting of oral argument in said proceedings before said Public Service Commission. The [fol. 32] position and interests of this petitioner are identical with the position and interests which the Public Service Company of Indiana, Inc. had at the time that company was so permitted to intervene and it is also in the public interest that said Indiana Gas & Water Company, Inc. for the reasons hereinbefore stated be permitted to intervene in this cause.

Wherefore said Indiana Gas & Water Company, Inc. prays that the court issue its order in this cause authorizing and permitting said Indiana Gas & Water Company, Inc. to intervene and to participate in these proceedings as a party defendant and to have all the rights of any party to such action, including the right to appeal.

Evans & Hebel by William P. Evans, Attorneys for  
Petitioner, Indiana Gas & Water Company, Inc.

*Duly sworn to by William P. Evans. Jurat omitted in printing.*

[fol. 33] IN CIRCUIT COURT OF RANDOLPH COUNTY

[Title omitted]

#### PLAINTIFF'S SUPPLEMENTAL COMPLAINT

Comes now the plaintiff in the above entitled cause and by leave of Court complains of the defendants by way of Supplemental Complaint and for cause of complaint, alleges:

1. That subsequent to the trial of this cause on March 6, 1946, plaintiff on March 21, 1946 forwarded by United States mail to the defendant Public Service Commission of Indiana for filing in the proceeding complained of herein, being Cause No. 16741 before said Commission entitled "In the matter of the Investigation by the Commission in respect of the Distribution by Panhandle Eastern Pipe Line Company, as a Public Utility, of Natural Gas to Consumers Within the State of Indiana," a document entitled "Offer of Respondent to Furnish Information Designated by Com-

mission Order Dated November 21, 1945, on Condition That the Same Be Accepted by the Commission as Information Only and That Said Order Dated November 21, 1945 Be So Modified as to State Unequivocally That It Involves No Assertion of Any Jurisdiction of Authority of the Commission to Regulate the Business of Respondent of Selling and [fol. 34] Directly Delivering Natural Gas Transported in Interstate Commerce to Industrial Consumers in the State of Indiana, and Seeks the Filing of the Reports and Documents Designated in Said Order for Information Purposes only. That said document, omitting formal parts, was in the following words and figures, to-wit:

"Comes now Panhandle Eastern Pipeline Company and respectfully shows this Honorable Commission:

1. That this Respondent has at all times throughout this proceeding asserted and insisted, and continues to assert and insist, that it is engaged solely in interstate commerce in the State of Indiana, that this Commission consequently has no jurisdiction of Respondent or its business, and that any statute of Indiana construed to purport to confer such jurisdiction as applied to Respondent and its business is void because in violation of Article I, Section 8(3) of the Constitution of the United States.

2. That Respondent has asserted and continues to assert such position in the proceeding to set aside and vacate such order in Cause No. 5440 in the Randolph Circuit Court entitled *Panhandle Eastern Pipeline Company v. The Public Service Commission, et al.*, which cause has been heretofore tried in said Court and taken under advisement.

3. That at the time said action was commenced Respondent in good faith understood and believed and still believes that said order dated November 21, 1945 constituted and constitutes an assertion of the right and authority to regulate the rates and service of Respondent in its business of selling and directly delivering natural gas transported in interstate commerce [fol. 35] to certain industrial consumers as shown by the record in said cause which business Respondent contends is protected from such regulation by Article I, Section 8(3) of the Commerce Clause.

4. That this Commission has now asserted by arguments and brief in said action in the Randolph Circuit Court that the papers and documents which Respondent is ordered to file by said order dated November 21, 1945 are sought by it for information purposes only and not as an assertion of jurisdiction to regulate Respondent's rates and service for direct sales and deliveries to industrial consumers within the State of Indiana.

5. Respondent denies that the Commission is authorized by law to require the filing of the papers and documents ordered filed by said order dated November 21, 1945 for the reason that the same are not relevant to the exercise of any jurisdiction which the Commission possesses and no part of the business of Respondent is subject to its jurisdiction. However, Respondent has no desire to withhold from the Commission any matters designated in said order which are desired solely for information purposes, even though the preparation and filing of the same hereafter will be burdensome to Respondent, *provided* the filing of the same would in no way prejudice its position that the Commission has no jurisdiction or authority to regulate its said business in the event that any attempt to regulate the same should hereafter be made by the Commission. In view of the assertions heretofore made in said order and now made by the Commission in arguments and briefs in said cause in the Randolph Circuit Court that the Commission has such regulatory [fol. 36] jurisdiction Respondent cannot be certain that it would not be prejudiced in said position if it should comply with the order as now entered unless the Commission by modification thereof specifically states in its order that said papers and documents are sought for information purposes only, and that said order is not to be construed as an assertion of any regulatory jurisdiction of Respondent or its business.

6. Respondent therefore now offers to file with the Commission all papers and documents specified in the order dated November 21, 1945, *provided* the Commission desires the same for information purposes only and not as an assertion of the regulatory jurisdiction of Respondent's business, and *provided* said order is

so modified or such further order is entered by the Commission as to preclude the possibility of any contention hereafter that Respondent will be in any manner prejudiced in its right to contest the jurisdiction of the Commission to regulate its said business in the event the Commission shall hereafter assert the right, power, authority or jurisdiction to regulate the same.

7. In the event that the order of the Commission dated November 21, 1945 is so modified or such further order is entered as to protect Respondent from any prejudice in its right to contest hereafter the jurisdiction and authority of the Commission to regulate its said business in the event that the Commission shall hereafter assert the right, power, authority or jurisdiction to regulate the same, Respondent will furnish the information designated in said order dated November 21, 1945 within such reasonable time as shall be designated [fol. 37] by the Commission and will dismiss said action now pending in the Randolph Circuit Court without prejudice and at its costs.

8. While Respondent is willing to afford the Commission a full opportunity to consider and accept or reject the proposal herein made, attention is called to the fact that the time for filing Respondent's reply brief in said cause in the Randolph Circuit Court will expire on Thursday, March 28, 1946 and that said cause will then be ready for decision by that Court."

2. That concurrently therewith plaintiff placed in the United States mail addressed to the Attorney General of Indiana the following letter:

"We enclose herewith copy of a document today to the Secretary of the Public Service Commission of Indiana for filing, together with a copy of the letter to the Secretary of the Commission.

"You are hereby notified that Panhandle Eastern Pipeline Company as plaintiff in Cause No. 5440 now pending in the Randolph Circuit Court will file in said cause at the time of filing its Reply Brief therein on Thursday, March 28, 1946, its application for leave to file a supplemental complaint setting forth therein filing of the enclosed document with the Public Service Commission of Indiana its action thereon, if any, or its

failure to act thereon, on or before March 27, 1946, and will further ask leave to reopen the trial of said cause [fol. 38] for the purpose of introducing evidence in support of the allegations of said supplemental complaint.

"Formal notice, together with a copy of the application to be filed and the supplemental complaint to be tendered for filing, will be sent to you in advance of the date fixed."

3. Notwithstanding the aforesaid offer, the defendant Public Service Commission of Indiana has, to this date, failed to take any action accepting the same or to take any action whatever in connection therewith.

4. That plaintiff has at all times insisted and continues insist that the Order of said defendant Commission dated November 21, 1945 was intended to and does assert regulatory jurisdiction over the business of plaintiff of selling direct to industrial consumers in Indiana natural gas transported in interstate commerce and that its failure to take action accepting the terms of said offer, said defendant Public Service Commission of Indiana has construed said Order as an Order asserting such regulatory jurisdiction, instead of as an Order merely seeking certain information from plaintiff as claimed at the argument by said Commission and in its brief filed on or about March 19, 1946.

Wherefore, plaintiff seeks judgment as prayed for in the original complaint and for all other proper relief.

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, Attorneys for  
Plaintiff.

[fol. 39] IN CIRCUIT COURT OF RANDOLPH COUNTY

[Title omitted]

AMENDED ANSWER OF THE DEFENDANT PUBLIC SERVICE COMMISSION OF INDIANA TO PLAINTIFF'S SUPPLEMENTAL COMPLAINT

The defendant, the Public Service Commission of Indiana, for its amended answer to the plaintiff's supplemental complaint herein says:

1. In answer to plaintiff's rhetorical paragraph number one of the supplemental complaint, defendant admits that

on the 21st day of March, 1946, plaintiff mailed to the Secretary of the Commission, in cause No. 16741, a document for filing as set out in plaintiff's rhetorical paragraph number one.

2. The defendant admits the mailing of the letter, as set forth in rhetorical paragraph number two of the supplemental complaint to the Attorney General of Indiana.

3. In answer to rhetorical paragraph number three of the supplemental complaint, the defendant admits that up to the date of the filing of the supplemental complaint the Commission had not acted on the petition filed with it on March 21, 1946, but defendant further says that since the date of filing of the supplemental complaint, the Public Service Commission did on April 9, 1946 deny said petition.

4. The defendant denies the allegations set forth in rhetorical paragraph number four of the supplemental complaint.

James A. Emmert, Attorney General of Indiana;  
[fol. 40] Frank E. Coughlin, First Assistant Attorney General; Karl J. Stipher, Deputy Attorney General; Urban C. Stover, Deputy Attorney General.

[fol. 41] IN CIRCUIT COURT OF RANDOLPH COUNTY

[Title omitted]

JUDGMENT—May 11, 1946

Come now the plaintiff, the defendants, and the intervenors by their respective counsel, and the Court having heretofore heard the evidence and argument of counsel, and being duly advised in the premises, finds that the allegations of the complaint are true and that the order of the defendant The Public Service Commission of Indiana, entered November 21, 1945, and its order supplemental thereto dated April 9, 1946, should be vacated and set aside, and the defendant The Public Service Commission of Indiana and the defendant members thereof should be perpetually enjoined from the enforcement thereof.

It is, Therefore, Ordered, Adjudged and Decreed that the order of the defendant The Public Service Commission

of Indiana, entered November 21, 1945, and the order supplemental thereto dated April 9, 1946, complained of in this proceeding, be and they are hereby vacated and set aside.

It is Further Ordered that the defendant The Public Service Commission of Indiana and the defendant members [fol. 42] thereof be and they are hereby perpetually enjoined and restrained from enforcing said order or any paragraph thereof against the plaintiff.

It is Further Ordered that plaintiff recover of the defendants all costs of this proceeding taxed at \$9.50.

John W. Macy, Judge of the Randolph Circuit Court.

[fol. 43] IN CIRCUIT COURT OF RANDOLPH COUNTY

[Title omitted]

MOTION FOR A NEW TRIAL BY PUBLIC SERVICE COMMISSION OF INDIANA AND MEMBERS THEREOF

The defendants, the Public Service Commission of Indiana and LeRoy E. Yoder, Lawrence E. Carlson, and Lawrence W. Cannon as members of the Public Service Commission of Indiana, each separately and severally pray that the court will grant a new trial in this cause on each of the following grounds:

1. The decision of the court is not sustained by sufficient evidence.
2. The decision of the court is contrary to law.
3. The court erred in receiving and considering the supplemental complaint filed in this cause.
4. The court erred in taking into account the supplemental complaint and order of the Commission entered after this case was filed by the plaintiff and tried.
5. Irregularity in the proceedings of the Court in that the Court overruled defendants' objections to the filing of the supplemental complaint and reopening the trial for further evidence.

[fol. 44] 6. The court erred in admitting into evidence and considering the supplemental order of the Commission, entered April 9, 1946.

James A. Emmert, Attorney General of Indiana;  
Frank E. Coughlin, First Assistant Attorney General;  
Karl J. Stipher, Deputy Attorney General;  
Urban C. Stover, Deputy Attorney General.

[fol. 45] IN CIRCUIT COURT OF RANDOLPH COUNTY

[Title omitted]

ORDER OVERRULING MOTION FOR A NEW TRIAL AND GRANTING  
APPEAL

Come now the defendants, The Public Service Commission of Indiana, LeRoy E. Yoder, Lawrence E. Carlson and Lawrence W. Cannon, as members of the Public Service Commission of Indiana by their attorneys and file their separate and several motion for a new trial herein in the following words and figures to wit (here insert) and the court being duly advised now overrules said motion for a new trial to which ruling said defendants and each of them except, and the Public Service Commission of Indiana and members thereof now in open court pray an appeal to the Supreme Court of Indiana from the judgment herein, and it appearing that the Public Service Commission of Indiana is an agency of the State of Indiana and the members of said Commission are officers of the State of Indiana, and the judgment herein is against the State and the members of said Commission in their official capacity, the court now grants said appeal without the filing of a bond, and the Court further orders that the transcript of the record, made before the Public Service Commission and filed in this case, be made a part of the transcript on appeal without copying in accordance with Rule 2-4 of the Supreme Court of Indiana, and the court grants 60 days within which all Bills of Exception shall be tendered and filed.

[fol. 46] IN CIRCUIT COURT OF RANDOLPH COUNTY

[Title omitted]

MOTION FOR NEW TRIAL BY INTERVENING DEFENDANTS.

The intervening defendants in the above entitled cause, Indiana Gas & Water Company, Inc., by its attorneys William P. Evans and Edmond W. Hebel; Central Indiana Gas Company, by its attorneys Robert R. Batton and Carl E. Hartley; Northern Indiana Public Service Company, by its attorneys John C. Lawyer and R. Stanley Anderson; Kokomo Gas & Fuel Company, by its attorney John E. Fell; Southern Indiana Gas & Electric Company by its attorney Edmund F. Ortmeyer; and Greenfield Gas Company, Inc., by its attorney William A. McClellan, each of said defendants having been heretofore on order of this court permitted to intervene herein and each of said defendants on order of this court having been constituted an intervening defendant, do now each separately and severally move the court to grant a new trial in this cause on each of the following grounds, to-wit:

1. The decision of the court is not sustained by sufficient evidence.

2. The decision of the court is contrary to law.

Respectfully submitted, Indiana Gas & Water Company, Inc. By William P. Evans. By Edmond W. Hebel. By Russell E. Wise, Its Attorneys. [fol. 47] Central Indiana Gas Company. By Robert R. Batton. By Carl E. Hartley, Its Attorneys. Northern Indiana Public Service Company, By John C. Lawyer, R. Stanley Anderson, Its Attorneys. Kokomo Gas & Fuel Company, By John E. Fell, Its Attorney. Southern Indiana Gas & Electric Company, By Edmund F. Ortmeyer, Its Attorney. Greenfield Gas Company, Inc., By William A. McClellan, Its Attorney.

[fol 48] IN CIRCUIT COURT OF RANDOLPH COUNTY

[Title omitted]

ORDER OVERRULING MOTION FOR NEW TRIAL OF INTERVENING  
DEFENDANTS AND GRANTING APPEAL

Come now the intervening defendants in the above entitled cause, Indiana Gas & Water Company, Inc., by its attorneys William P. Evans and Edmond W. Hebel; Central Indiana Gas Company, by its attorneys Robert R. Batton and Carl E. Hartley; Northern Indiana Public Service Company, by its attorneys John S. Lawyer and R. Stanley Anderson; Kokomo Gas & Fuel Company, by its attorney John E. Fell; Southern Indiana Gas & Electric Company, by its attorney Edmund E. Ortmeier and Greenfield Gas Company, Inc., by its attorney William A. McClellan, each having been constituted intervening defendants, and file their separate and several Motion for a New Trial herein which is in the following words and figures, to-wit:

(H. I.)

And the court being duly advised now overrules said Motion for a New Trial, to which ruling said intervening defendants and each of them except, and said intervening defendants and each of them now in open court pray an appeal to the Supreme Court of Indiana from the judgment herein and the court now grants said appeal.

John W. Macy, Judge, Randolph Circuit Court.

Dated this 7th day of June, 1946.

[fol. 49] IN CIRCUIT COURT OF RANDOLPH COUNTY

Cause No. 5440

PANHANDLE EASTERN PIPE LINE COMPANY, Plaintiff,

vs.

THE PUBLIC SERVICE COMMISSION OF INDIANA, et al.,  
Defendants

**Bill of Exceptions**

PLAINTIFF'S EXHIBIT No. 1

**STIPULATION**

It is hereby stipulated and agreed by and between the parties hereto as follows, to wit:

1. Plaintiff will offer in evidence at the trial of this cause the complete transcript of all the pleadings, evidence and entries filed, introduced with and made for and by the Public Service Commission of Indiana in the proceeding complained of in this action as prepared and filed with the Clerk of this Court by said Commission, but shall not by offering and introducing the same in evidence in this cause without objection be deemed to have waived any objection to the relevancy of any portion thereof to which objection was made as shown by said record at the time the same was offered in evidence in said proceeding before the Public Service Commission of Indiana.

2. No stipulation of fact introduced in said proceeding before the Public Service Commission, as shown by said transcript and as contained therein, shall be contradicted by any evidence introduced in this proceeding, subject to [fol. 50] the correction in paragraph 3 hereof.

\*3. Paragraph 25 of the stipulation of facts dated January 9, 1945, contained in said transcript, reads as follows: "In 1943 Panhandle sold 1,150,279 cubic feet of natural gas to Anchor-Hocking and 151,063 cubic feet of natural gas to Ohio Public Service Company."

Paragraph 16 of the Findings of Fact made by the Public Service Commission of Indiana in this proceeding and incorporated in its order in this cause contains the following statement: "In 1943 Panhandle sold 1,150,279 m. c. f. of

natural gas to Anchor-Hocking and 151,065 m. c. f. of natural gas to Indiana-Ohio Company." The figure contained in said statement in paragraph 16 of the Findings of Fact of the Public Service Commission of Indiana in this proceeding is correct, and the statement in paragraph 25 of said stipulation hereinbefore quoted is incorrect.

4. Exhibit 1 attached to this stipulation and made a part hereof is a true copy of the provisions of the Articles of Incorporation of Panhandle Eastern Pipe Line Company relating to its corporate powers.

5. The contract referred to in paragraph 5 of the plaintiff's complaint as having been entered into between plaintiff and Anchor-Hocking Glass Corporation on May 11, 1942, under which plaintiff sells and delivers natural gas to said Company, a copy of which contract is contained in the transcript of the proceedings before the Public Service Commission filed herein, being identified as Exhibit N-1 to [fol. 51] the stipulation of Facts dated January 9, 1945, introduced in evidence in said proceeding, was executed by Anchor-Hocking Glass Corporation in the State of Ohio and by plaintiff at its executive office at Kansas City, Missouri.

6. By the introduction in evidence in this cause of this stipulation, paragraph 3 hereof, paragraph 4 hereof, including Exhibit 1, and paragraph 5 hereof shall become a part of the record in this cause to the same extent as though they had been incorporated in the Stipulation of Facts dated January 9, 1945, introduced in evidence in the proceeding before the Public Service Commission of Indiana complained of herein as contained in said transcript of said proceedings filed herein.

7. Each party hereto reserves the right to introduce further evidence herein, including evidence to supplement and explain, but not to contradict, the facts herein stipulated, together with the facts stipulated in said proceeding before the Public Service Commission of Indiana as shown by the transcript thereof.

8. Any party in this cause desiring to introduce evidence in addition to that contained in the transcript of the defendant Public Service Commission referred to in paragraph 1 of this Stipulation, or in addition to the matters contained

in this Stipulation, shall submit to the other party or parties in this cause at least ten (10) days prior to March 6, 1946 a written statement of the character and scope of such evidence, including the name of the witness or witnesses whose testimony is to be offered, to introduce the [fol. 52] same, together with a copy of any exhibit or exhibits to be introduced in connection with such evidence. A Deposition of any such witness taken on or before ten (10) days prior to said date shall constitute a compliance herewith. No additional evidence shall be introduced by any party at the trial of this cause unless previously submitted in accordance with the requirements of this paragraph.

William Hunter, George N. Beamer, Barnes, Hickman, Pantzer and Boyd, Attorneys for Plaintiff. James A. Emmert, Atty. Gen'l; Frank Coughlin, 1st Assistant; Urban C. Stover, Deputy; Attorneys for Defendants. Evans & Hibel, by Wm. P. Evans, Attorneys for Intervenor Indiana Gas & Water Co. Van Atta, Batton and Harker, by Robert R. [fol. 53] Batton, C. H., Central Indiana Gas Co. John E. Fell, Attorneys for Kokomo Gas & Fuel Co. R. Stanley Anderson, for Northern Indiana Public Service Co.

[fol. 54] PLAINTIFF'S EXHIBIT No. 2

STATE OF INDIANA, PUBLIC SERVICE COMMISSION OF INDIANA

Cause No. 16741

In the Matter of the Investigation by the Commission in Respect of the Distribution by Panhandle Eastern Pipe Line Company, as a Public Utility, of Natural Gas to Consumers Within the State of Indiana

STIPULATION OF FACTS—Filed January 9, 1945

# I

It is agreed by and between the parties to this stipulation that Panhandle Eastern Pipe Line Company asserts that any action or order of the Public Service Commission of Indiana herein purporting to regulate, interfere with,

or otherwise affect the sale and delivery by Panhandle Eastern Pipe Line Company to Anchor-Hocking Glass Company of natural gas transported by Panhandle in interstate commerce would unduly and unlawfully burden interstate commerce in violation of Article 1, Section 8 (3) of the Constitution of the United States, and that if sections 54-112 et seq. Burns Indiana Statutes Annotated, 1933, or any other Indiana statute, is construed to purport to authorize said commission to regulate, interfere with or otherwise affect such sale and delivery, such statutes as so construed are unconstitutional and void because in violation of Article 1, Section 8 (3) of the Constitution of the United States, and denies:

(a) that it sells natural gas in Indiana except as a part of interstate commerce;

(b) that it is engaged in intrastate commerce in the State of Indiana;

(c) that it has transacted or is transacting within the State of Indiana any business as a public utility within said state;

[fol. 55] (d) that the sale and delivery of natural gas transported by it in interstate commerce directly to an industrial consumer is subject to the jurisdiction of the Public Service Commission of Indiana;

(e) that it is in any manner subject to the jurisdiction of said commission;

(f) that said commission has any right, power or authority to institute this proceeding against it;

(g) that the statutory provisions under which this action is instituted (Secs. 54-112, et seq. Burns Indiana Statutes Annotated, 1933) authorizing investigation by said commission of matters relating to any public utility, have any application to it or its business;

(h) that it is under any obligation to comply with any Indiana statute or any order of said commission relating to public utilities within the State of Indiana; and

(i) that its business or any part thereof is subject to regulation of any character by said commission.

## II

It is agreed by and between the parties to this stipulation that by entering into this stipulation as to the facts relating to the various matters specified in the order approved by the Public Service Commission of Indiana on October 13, 1944, Panhandle Eastern Pipe Line Company does not concede and will not be charged with having conceded any of the matters herein above asserted or denied by it.

## III

It is further agreed by said parties that each party hereto reserves the right to introduce further evidence herein, including evidence to supplement and explain, but not to contradict, the facts herein stipulated.

## IV

It is further agreed between the parties hereto (i) that by the making of this stipulation of facts no party hereto waives any objection it may have to the relevancy or materiality of any fact herein stipulated, or its right to take and preserve an exception to any ruling by the Public Service Commission of Indiana on any objection by [fol. 56] such party to the relevancy or materiality of such fact, and (ii) that any party hereto who has any objection or objections to the relevancy or materiality of any fact or facts stated in this stipulation shall make such objection or objections in writing filed with said Commission in this cause at the time of filing this stipulation, and any such objection not so taken shall be deemed to have been waived.

## V

Subject to the foregoing agreements, it is hereby agreed by and between the parties hereto that this stipulation, when introduced in evidence in this cause, shall have the same force and effect as though the matters hereinafter set forth in Division VI had been proved by competent evidence on a hearing in this cause.

## VI

The facts, herein stipulated subject to the foregoing agreements, are as follows:

1. Panhandle Eastern Pipe Line Company (hereinafter called "Panhandle") is a corporation organized under the laws of the State of Delaware on December 23, 1929 under the name of "Interstate Pipe Line Company." On May 9, 1930 said initial name was lawfully changed to "Panhandle Eastern Pipe Line Company." On May 29, 1930 and upon application made by Panhandle pursuant to the provisions of Section 59 of The Indiana General Corporation Act, a Certificate of Admission to transact business in the State of Indiana was issued by the Secretary of State of Indiana to Panhandle, a copy of which certificate is attached to this stipulation as "Exhibit A" and is hereby made a part hereof. On or about April 13, 1933 the said authority of Panhandle to transact business in Indiana was revoked by the State because of the failure of Panhandle to file annual reports for the years 1931 and 1932 with the [fol. 57] Secretary of State of Indiana, as required by the applicable statutes of Indiana. On September 19, 1935, and upon application made by Panhandle pursuant to said Section 59, a Certificate of Admission to transact business in the State of Indiana was issued by the Secretary of State of Indiana to Panhandle, a copy of which certificate is attached to this stipulation as "Exhibit B" and is hereby made a part hereof. Said last mentioned Certificate of Admission is still in force and effect.

2. The principal executive offices of Panhandle are located at 1221 Baltimore Avenue, Kansas City 6, Missouri and 135 South LaSalle Street, Chicago 3, Illinois. The present statutory office of Panhandle in Indiana is 601 Illinois Building, 17 West Market Street, Indianapolis 4, Marion County, Indiana. None of the books and records of Panhandle are or have at any time been kept at said statutory office in Indiana or at any other office or place in Indiana. All of the books of account and records of Panhandle pertaining to its business are kept and maintained at one or the other of its aforesaid principal executive offices. All of the operations and business of Panhandle, including its operations and business in the State of Indiana, are directed, managed and controlled from the aforesaid principal executive offices.

3. Panhandle is engaged principally in the production, purchase, transmission and sale of natural gas. Its main transmission line extends approximately 1,160 miles from the Amarillo Gas Field in the Texas Panhandle and the Hugoton Gas Field in southwestern Kansas through the States of Oklahoma, Kansas, Missouri, Illinois, Indiana and the northwest corner of Ohio into the State of Michigan to a point near Detroit. Said main transmission line and appurtenant facilities of Panhandle as presently constituted, consist of 22-inch, 24-inch and 26-inch transmission mains (there being, as a result of the completion of Panhandle's [fol. 58] 1943 construction program, an additional continuous parallel main from a point near Liberal, Kansas to a point 68.8 miles northeast of Zionsville, Indiana, and from a point near Edgerton, Indiana to a point in Ohio 18.2 miles northeast of said Edgerton), dehydration plants, gasoline plant, compressor stations and related facilities incidental to the transmission and delivery of such natural gas. From said main transmission line, lateral or branch lines of varying sizes and lengths extend to interconnections with gas lines of various distributing companies or to industrial plants. Said gas fields and transmission line system are shown on the map which is attached to this stipulation as "Exhibit C" and is hereby made a part hereof.

4. The portion of the present transmission line system that Panhandle originally owned and operated (such portion being hereinafter called the "Original Panhandle Line") is the portion (shown in green on said "Exhibit C") extending from such gas fields to a point near Dana, Indiana. The Original Panhandle Line was placed in practical operation in the early part of 1932.

5. In 1932, the eastern end of the Original Panhandle Line was interconnected, near Dana, Indiana, with a natural gas transmission system which, as extended in 1936 from Zionsville, Indiana, extends from said interconnection at Dana to Detroit, Michigan, and was constructed by Indiana Gas Transmission Corporation (hereinafter called "Indiana Transmission"), a Delaware corporation, and by Michigan Gas Transmission Corporation (hereinafter called "Michigan Gas"), a Delaware corporation (into which Indiana Transmission was merged on March 4, 1936), for the purpose of providing an extension to the Original Panhandle Line and extending as far east as Detroit, Michigan,

the market for the natural gas from the aforesaid Amarillo and Hugoton gas fields. Said system is shown on said "Exhibit C" in blue and is hereinafter called the "Indiana-[fol. 59] Michigan System." The portion of the Indiana-Michigan System, extending from near Dana, Indiana, to Muncie, Indiana, is the portion placed in operation in the early part of 1932; and the portion thereof, extending from Zionsville, Indiana, to Detroit, Michigan, is the portion placed in operation in 1936; and the portion thereof, extending from the Ohio-Michigan State Line to Saginaw, Michigan, and Kalamazoo, Michigan, is the portion consisting of extensions made since Panhandle acquired in 1942 the Indiana-Michigan System. The Indiana-Michigan System, as in existence at the time of its acquisition by Panhandle, was acquired by Panhandle as hereinafter set forth in paragraph numbered 6 hereof. A true copy of the Findings made and Opinion given by the Securities and Exchange Commission in connection with an order entered by said commission on May 27, 1941 in "In the Matter of Panhandle Eastern Pipe Line Company, File Nos. 31-109, 31-493, 31-108, Columbia Oil & Gasoline Corporation, File Nos. 31-107, 31-106, Columbia Gas & Electric Corporation, File Nos. 31-422, 31-423, Public Utility Holding Company Act of 1933—Section 2(a)(8)" is attached to this stipulation as "Exhibit D" and is hereby made a part hereof, as showing only what the Securities and Exchange Commission found on the evidence before it.

6. On February 6, 1942 Panhandle purchased from Columbia Gas & Electric Corporation, a Delaware Corporation, the then owner thereof, all the outstanding capital stock and securities of Michigan Gas. On March 31, 1943, Panhandle caused Michigan Gas to be liquidated and in such liquidation acquired the properties constituting the Indiana-Michigan System.

7. On February 6, 1942, Panhandle purchased the inter-connecting gas transmission lines which are shown in red on said "Exhibit C", from The Ohio Fuel Company (hereinafter called "Ohio Fuel") an Ohio corporation whose entire capital stock was and had been since prior to 1931 [fol. 60] owned by said Columbia Gas & Electric Corporation or an affiliate thereof.

8. On December 18, 1931 and upon application made by Indiana Transmission pursuant to the provisions of Section 59 of The Indiana General Corporation Act, a Certificate of Admission to transact business in the State of Indiana was issued by the Secretary of State of Indiana to Indiana Transmission, a copy of which certificate is attached to this stipulation as "Exhibit E" and is hereby made a part hereof. Said Certificate of Admission continued to be in force and effect until the merger of Indiana Transmission into Michigan Gas on March 4, 1936. On March 31, 1936 upon application made by Michigan Gas pursuant to the provisions of Section 59 of The Indiana General Corporation Act, a Certificate of Admission to transact business in the State of Indiana was issued by the Secretary of State of Indiana to Michigan Gas, a copy of which certificate is attached to this stipulation as "Exhibit F" and is hereby made a part hereof.

9. Between the date of the interconnection of the Original Panhandle Line and the Indiana Michigan System and March 4, 1936, Panhandle (except in emergencies, in which cases gas was obtained from Ohio Fuel) supplied to Indiana Transmission all of the gas which Indiana Transmission was reselling to distributing utilities from the Indiana-Michigan System for resale by them to residential, commercial and industrial consumers in Indiana and Michigan. Said natural gas was supplied by Panhandle under an informal arrangement as shown by communications, dated November 19, 1931, from Columbia Oil and Gasoline Corporation to United Light & Power Company and from Panhandle Corporation to United Light & Power Company, approved by Panhandle's Board of Directors at its meeting held January 19, 1932, true copies of which are attached to this stipulation as "Exhibits G-1, G-2, and G-3," and are hereby made a part hereof.

[fol. 61] 10. Between said date of March 4, 1936 and the date of the acquisition by Panhandle of the Indiana-Michigan System, Panhandle (except in emergencies, in which cases gas was obtained from Ohio Fuel) (i) supplied to Michigan Gas all of the gas which Michigan Gas was reselling to distributing utilities from the Indiana-Michigan System for resale by them to residential, commercial and industrial consumers in Indiana, Ohio and Michigan, and (ii) delivered to Michigan Gas such amounts of gas as

Panhandle desired to have transported for Panhandle's account (a) for sale by Panhandle to distributing utilities in Indiana, Ohio and Michigan which resold such gas to residential, commercial and industrial consumers, and (b) during the period between May 11, 1942 and March 31, 1943 for sale by Panhandle directly to Anchor-Hocking Glass Company (said company and its predecessors being hereinafter called "Anchor-Hocking"). Prior to July 31, 1936 said natural gas was supplied and delivered to Michigan Gas by Panhandle under the aforesaid contracts with Indiana Transmission (Exhibits G-1, G-2 and G-3). After July 31, 1936 said natural gas was supplied and delivered by Panhandle under four principal contracts (and the supplemental agreements thereto) between Panhandle and Michigan Gas (hereinafter collectively referred to as the "Panhandle-Michigan Gas Contracts") dated respectively March 17, 1936, July 31, 1936, August 1, 1936, and October 1, 1936, true copies of which principal contracts (and the respective supplemental agreements thereto) are attached to this stipulation as "Exhibits G-4, G-5, G-6 and G-7," respectively, and are hereby made a part hereof. Although the said contracts dated July 31, 1936 and August 1, 1936 by their terms expired five years from date, these contracts were each continued in effect, without formal extension, until March 31, 1943. Since the acquisition by Panhandle of [fol. 62] the properties constituting the Indiana-Michigan System, Panhandle has sold directly to the public utility companies formerly served by Michigan Gas natural gas for resale and distribution by them. In the case of the gas supply for the Detroit, Michigan, area the contract for the supply of gas to the public utility company reselling the same in that area was made by Panhandle itself at a date prior to the commencement of the extension from Zionsville, Indiana, to Detroit, Michigan. Contracts with Indiana distributing public utility companies included those dated respectively September 27, 1937, May 1, 1937, and October 1, 1936, with the intervenors Kokomo Gas and Fuel Company (hereinafter called "Kokomo Company") and Northern Indiana Public Service Company and with Public Service Company of Indiana (to which latter company the intervenor Public Service Company of Indiana, Inc. (hereinafter called "Service Company") is successor by consolidation). Copies of said contracts (and the respective supplemental agreements thereto) are attached hereto as "Exhibits H-1,

H-2 and H-3", respectively, and are hereby made a part hereof.

11. Special individual contracts were made from time to time for the sale and delivery of natural gas on an interruptible basis to large industrial consumers. During the time that Michigan Gas owned the properties constituting the Indiana-Michigan System, the contracts appertaining to each such supply of gas generally consisted of (i) the applicable contract between Panhandle and Michigan Gas being either "Exhibit G-5" or "Exhibit G-6" as the case might be, (ii) a contract between Michigan Gas and the Indiana distributing utility under which the natural gas was obtained by the distributing utility and (iii) a contract between the distributing utility and the industrial consumer. [fol. 63] Illustrative of the agreements relating to this class of consumers are those for the supply of natural gas on an interruptible basis to the Mid-States Steel and Wire Company for use by that company at its plant at Crawfordsville, Indiana. Copies of the contracts between Michigan Gas and Service Company, and between Service Company and Mid-States Steel and Wire Company, and of the notification by Michigan Gas to Panhandle thereof (said notice being given pursuant to the requirements of Section 2, of Article II, of Exhibit G-6) are attached to this stipulation as "Exhibits I-1, I-2, and I-3", respectively, and are hereby made a part hereof. On March 31, 1943 Panhandle succeeded to all the rights and property of Michigan Gas, including the rights and obligations of Michigan Gas under all the contracts of the character referred to in subdivision (ii) of the second sentence of this paragraph numbered 11. For the twelve-month period ending September 30, 1944, the amounts in thousands of cubic feet (MCF), of gas purchased by the intervenors from Panhandle and resold by them to industrial consumers, and the revenues derived by the intervenors therefrom were as follows:

Company	MCF Sales	Revenue
Central Indiana Gas Company (hereinafter called "Central Gas")	9,004,962	\$2,624,557.81
Kokomo Company	480,406	196,241.70
Northern Indiana Public Service Company	940,340	545,940.00
Service Company	1,978,605	812,631.80

12. Panhandle sells in Indiana the natural gas transported there by it (i) to other gas companies which dis-

tribute such gas to residential, commercial, and industrial consumers served by them, and (ii) to one industrial consumer (Anchor-Hocking) served directly by Panhandle. Panhandle has recently completed negotiations with and [fol. 64] has entered into a contract to supply natural gas to E. I. DuPont De Nemours & Company at and for use in the operation of its plant, commonly known as its "Grasselli Chemical Company Plant", which is located adjacent to the town of Fortville, Indiana. A copy of said contract is attached hereto as "Exhibit J-1" and is hereby made a part hereof. There is now pending before the Federal Power Commission as Docket G607 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of convenience and necessity, a copy of which application is attached hereto as "Exhibit J-2" and is hereby made a part hereof. Panhandle does not sell in Indiana any gas to residential and commercial consumers as such. It does supply for a moderate charge gas for residential purposes to several of its employees who live in company owned houses located on Panhandle's property. In other states traversed by Panhandle's pipe lines obligations to supply residential gas were assumed as part consideration for rights of way and similar arrangements for supplying gas to Panhandle's employees living on Panhandle's property were made, as a result of which, throughout its entire system, Panhandle is now rendering service of such character to approximately 194 persons. The revenue therefrom for the year ended December 31, 1943, amounted to \$12,220.49 for the entire system. During the same year revenue from direct industrial sales for the entire system amounted to \$1,559,195.24 and revenue from sales to other gas companies for resale amounted to \$22,072,005.40. Current sales are being made in approximately the same proportions.

13. Approximately 950,000 consumers are supplied directly or indirectly with gas from the system of Panhandle, including more than 112,000 consumers in Indiana. The number of industrial consumers served directly by Panhandle were 21 in 1943 and are 23 at the present time. The names of such consumers, the locations of their plants at which natural gas is supplied by Panhandle, and the years in which direct services of natural gas by Panhandle to such plants commenced (and in cases where direct service was

[fol. 65] given by a subsidiary of Panhandle, also the years in which such service commenced and the names of such subsidiaries), are respectively, as follows:

Name of Consumer	Location of Plant	Year Direct Service Commenced and Name of Subsidiary
Magnolia Petroleum Co., et al	Pratt, Kansas	1944
Phillips Petroleum Co.	Paola and Sharpe, Kansas	1935
John Freiling	Hannibal, Missouri	1933
Harbison-Walker Refractories Co.	Fulton and Vandalia, Mo.	1931
Hercules Powder Co.	Louisiana, Missouri	1942
Independent Gravel Co.	Hannibal, Missouri	1942
Mexico Refractories Co.	Mexico, Missouri	1931
Missouri Power and Light Co.	Jefferson City and Mexico, Mo.	1931
Pratt and Whitney Aircraft Co. of Missouri	Kansas City, Missouri	1943
Phillips Petroleum Co.	Harrisonville, Jefferson City, and Leeton, Missouri	1935
The W. J. Small Co., Inc.	Booneville, Liberty and Helton, Missouri	1944
United Brick and Tile Co.	Vale, Missouri	1931
Universal Atlas Cement Co.	Hannibal, Missouri	1933
Walsh Refractories Corp.	Vandalia, Missouri	1931
Wellsville Fire-Brick Co.	Wellsville, Missouri	1932
Black-White Lime Co.	Quincy, Illinois	1933
General Motors Corp.—Saginaw Malleable Iron Division—Plant 2	Tilton, Illinois	1944
The Hegler Zinc Co.	Danville, Illinois	1943
Marblehead Lime Co.	Marblehead and Quincy, Ill.	1935
Menke Stone and Lime Co.	Quincy, Illinois	1933
Anchor Hocking Glass Corp.	Winchester, Indiana	1942
Albion Malleable Iron Co.	Albion, Michigan	1944
Michigan Seamless Tube Co.	South Lyon, Michigan	1943

\*Service by Panhandle Illinois Pipe Line Company, a 100% owned subsidiary of Panhandle, from date shown to 1938, and by Illinois Natural Gas Company, a 100% owned subsidiary of Panhandle, from 1938 to March 1943.

Anchor-Hocking, which has a glass factory located near Winchester, Indiana, is the only industrial consumer in Indiana which Panhandle now serves or has heretofore served directly.

14. Anchor-Hocking is and has been for many years a principal American manufacturer of inexpensive machine [fol. 66] made glass tableware and is the third largest manufacturer and distributor of glass containers in the United States. The products manufactured by it are sold by it principally in interstate commerce. Its business is subject to applicable federal regulatory statutes. Its plant at Winchester, Indiana is one of its large manufacturing plants, but its general office is located at Lancaster, Ohio. The natural gas purchased from Panhandle for use at the

Winchester plant of Anchor-Hocking is used in the manufacture of products produced there.

15. Central Gas serves natural gas purchased by it from Panhandle to more than 30 large industrial consumers. Such gas is delivered by Central Gas to such consumers in Indiana and is used by them in their manufacturing plants in Indiana. Nine of such plants so served are large glass plants producing products of the same general character as those manufactured by Anchor-Hocking. The other such plants normally produce various items of automotive, insulating and fencing materials. The products manufactured in Indiana by all said 30 large industrial consumers are sold by them principally in interstate commerce. Said industrial consumers include Hart Glass Division of Armstrong Cork Company, Ball Brothers Company, Foster-Forbes Glass Company, Owens-Illinois Glass Company, Slick Glass Corporation, Sneath Glass Company, The Warfield Company, Sterling Glass Division, Delco-Remy Division of General Motors Corporation, Indiana Steel and Wire Company, Johns-Manville Products Corporation, The National Tile Company and Warner Glass Company.

16. Service Company serves natural gas purchased by it from Panhandle to nine large industrial consumers. Such gas is delivered by Service Company to such consumers in Indiana and is used by them in their manufacturing plants in Indiana. At said plants such consumers normally produce aluminum extrusion products, automotive products, stainless steel, steel springs, galvanized [fol. 67] fencing, armor plate, mechanical gears and enamelware. The products manufactured in Indiana by all said large industrial consumers are sold by them principally in interstate commerce. Said industrial consumers include Aluminum Company of America, Chrysler Corporation, Ingersoll Steel and Disc Division of Borg-Warner Corporation and Ingram Richardson Company.

17. Kokomo Company serves natural gas purchased by it from Panhandle to six large industrial consumers. Such gas is delivered by Kokomo Company to such consumers in Indiana and is used by them in their manufacturing plants in Indiana. At said plants such consumers normally pro-

duce steel and wire products, automotive accessories and parts, vitreous enamelware, radios, stoves, stokers, miscellaneous metal specialties, and non-ferrous alloys. The products manufactured in Indiana by all such large industrial consumers are sold by them principally in interstate commerce. Said industrial consumers are Continental Steel Corporation, American Radiator and Standard Sanitary Corporation, Haynes-Stellite Company, Kingston Products Corporation, Chrysler Corporation and Globe Stove and Range Company.

18. Northern Indiana Public Service Company serves natural gas purchased by it from Panhandle to 72 large industrial consumers. Such gas is delivered by said company to such consumers in Indiana and is used by them in their manufacturing plants in Indiana. At said plants such consumers normally produce electrical equipment, automotive products, airplane products, heavy truck equipment, insulated wire and miscellaneous steel products. The products manufactured in Indiana by all said large industrial consumers are sold by them principally in interstate commerce. Said industrial consumers include General Electric Company, International Harvester Company, Studebaker Corporation and Phelps-Dodge Corporation.

19. Panhandle, in Indiana, sells natural gas to Kentucky Natural Gas Corporation, a Delaware corporation, which company resells all or the principal part of such natural gas to companies distributing, as public utilities, natural gas to residential, commercial and industrial consumers in Indiana. Panhandle, in Indiana, also sells natural gas to the following companies or municipal corporations, which are public utilities or municipalities distributing such gas to residential, commercial and industrial consumers in Indiana, to-wit: Central Gas, Greenfield Gas, Indiana Gas Distribution Corporation, Indiana-Ohio Public Service Company, Kokomo Company, Lynn Natural Gas Company, Northern Indiana Public Service Company, Pendleton Natural Gas Company, Service Company, Richmond Gas Corporation, Town of Lapel, Town of Montezuma, Town of Pittsboro, and Town of Roachdale. The number and classi-

ification of gas consumers served by such gas from Panhandle are approximately as follows:

Name of Company	Approximate Number of Customers Served				
	Residential	Commercial	Industrial	Other	Total
Central Gas	31,384	1,322	103		32,809
Greenfield Gas Co., Inc.	1,296	59	2	4	1,361
Indiana Gas Distribution Corp.					2,070
Indiana-Ohio Public Service Co.	3,314	219	11		3,544*
Kokomo Co.	6,674	379	23		7,076
Lynn Natural Gas Co.	265	28			293
Northern Indiana Public Service Co. (Ft. Wayne District)	31,633	1,160	67	68	32,928
Pendleton Natural Gas Co.	617	39			656
[fol. 69]					
Service Company	22,516	1,916	46	120	24,598
Richmond Gas Company					6,800*
Town of Lapel					250*
Town of Montezuma					100*
Town of Pittsboro					116*
Town of Roachdale					92
Total	97,692	5,122	252	192	112,693
* Number of meters.					

20. Deliveries of natural gas by Panhandle directly to industrial customers using large quantities of gas, and to other gas companies for resale to industrial customers using large quantities of gas, are, in most instances, subject to curtailment, interruption or discontinuance in the event of an insufficiency in the supply of gas.

21. On April 20, 1931, said Indiana Gas Distribution Corporation (hereinafter called "Indiana Gas") was organized under The Indiana General Corporation Act by said Columbia Gas & Electric Corporation. Indiana Gas constructed or acquired gas distribution facilities in Indiana along the Indiana-Michigan System. It operated and now operates as a public utility in distributing natural gas directly to Indiana consumers. Since 1932 substantially all the natural gas distributed by Indiana Gas has been supplied directly or indirectly by Panhandle. At the time of the purchase by Panhandle of the stock and securities of Michigan Gas, Panhandle also purchased the stock and indebtedness of Indiana Gas. Indiana Gas (i) was at said time, and had been since natural gas became available in the Indiana-Michigan System, distributing natural gas to about 2,000 residential and commercial consumers, and (ii) was at said time distributing natural gas to one industrial [fol. 70] consumer, to-wit, Anchor-Hocking, whose plant to

which gas service was supplied is located near Winchester, Indiana, and had been supplying natural gas continuously to such industrial consumer since about April 22, 1931, when such consumer first commenced the extensive use of natural gas as a fuel at its said plant. From 1936 to August 1, 1941 the natural gas which Indiana Gas sold to Anchor-Hocking was supplied it by Michigan Gas which obtained such natural gas under the contract included herein as "Exhibit G-6". A copy of the agreement, dated August 1, 1940, under which Michigan Gas last sold such gas to Indiana Gas is attached hereto as "Exhibit K" and hereby made a part hereof. The preceding agreements covering such sales were similar in form. A copy of the agreement, dated August 1, 1940, under which Indiana Gas last supplied such gas to Anchor-Hocking is attached hereto as "Exhibit L" and hereby made a part hereof. The preceding agreements covering such sales were similar in form. On July 31, 1941, Panhandle entered into an agreement with Indiana Gas providing for the sale and delivery of gas to that company for resale to Anchor-Hocking and, on the same date, entered into an agreement with Michigan Gas to transport such gas for Panhandle's account. These agreements were amended on August 21 and September 17, 1941, respectively, to provide a thirty-day termination clause. Copies of said two agreements and said two supplemental agreements thereto are attached hereto as "Exhibit M" and are hereby made a part hereof. Federal Power Commission took no action on the rates in said contracts between Panhandle and Indiana Gas and be- [fol. 71] tween Panhandle and Michigan Gas, both dated July 31, 1941, when filings thereof were made with that Commission in August 1941; and therefore by reason of a direction which had been received by telegram by Panhandle from that Commission on July 30, 1941, and which notified Panhandle not to terminate the rate schedules based on said contracts of July 31, 1936 and August 1, 1936 (Exhibits G-5 and G-6) until further notice from that Commission, Panhandle, Michigan Gas and Indiana Gas never actually put said contracts of July 31, 1941 in effect. The various contractual arrangements between Panhandle, Michigan Gas and Indiana Gas in respect of the supply of gas for Anchor-Hocking that were in effect immediately prior to August 1, 1941 were continued in effect until May 11, 1942, at which time Panhandle commenced selling gas

direct to Anchor-Hocking under an industrial gas contract, dated May 11, 1942, a copy of which is attached hereto as "Exhibit N-1" and is hereby made a part hereof. During the period from May 11, 1942 to March 31, 1943, Michigan Gas transported the gas Panhandle sold to Anchor-Hocking in accordance with the terms of an agreement entered into with Panhandle, dated May 11, 1942, a copy of which is attached hereto as "Exhibit N-2" and is hereby made a part hereof. Said last mentioned agreement (Exhibit N-2) was filed with the Federal Power Commission by Michigan Gas on June 10, 1942; and a copy of the letter from Michigan Gas to said commission, transmitting said agreement for filing, is attached hereto as "Exhibit N-3" and is hereby made a part hereof. On July 8, 1943 the Federal Power Commission notified Panhandle with respect to said matter as follows:

"The Panhandle Eastern Pipe Line Company submitted two agreements dated July 31, 1941 and August 21, 1941 with the Indiana Gas Distribution Corporation for the sale of natural gas for resale to the Anchor-Hocking Glass Corporation at Winchester, Indiana. Since then, your company has started to serve the Anchor-Hocking Glass Company directly. Therefore the agreements of July 31, 1941 and August 21, 1941 are without further significance and no action is necessary in regard thereto."

[fol. 72] On or about July 10, 1942, Panhandle sold the stock of Indiana Gas to Mr. John H. Maxon and Mr. William A. McClellan. Since said sale of stock, Indiana Gas has continued to purchase, and does now purchase, from Panhandle all the natural gas distributed by it.

22. The pressure at which the natural gas is carried in the portion of the main transmission line that crosses Indiana varies from approximately 250 pounds to 600 pounds per square inch. At the various interconnections between the main line and the lateral or branch gas lines in Indiana, the pressure of the gas is reduced to pressures ranging between approximately 200 pounds and 5 pounds per square inch. The necessary regulator facilities for this purpose are owned and operated by Panhandle.

23. Among the lateral or branch gas transmission lines of Panhandle in Indiana is a six-inch lateral or branch

line (hereinafter called the "Winchester line") extending north, a distance of about seven miles, from the sixteen-inch lateral or branch line extending between Muncie, Indiana and a point in Ohio near the Indiana-Ohio State Line. The Winchester line was constructed early in 1931. The said sixteen-inch line and the Winchester line were a part of the natural gas lines and facilities which, as set forth in paragraph numbered 7 hereof, Panhandle purchased from Ohio Fuel on February 6, 1942.

24. The pressure in said sixteen-inch line is normally carried at approximately 200 pounds per square inch. At or adjacent to the point where the natural gas is taken into the Winchester line from said sixteen-inch line, the pressure [fol. 73] of such gas in the Winchester line is, by means of a regulator which is owned and operated by Panhandle, reduced to approximately 100 pounds per square inch. The gas in the Winchester line is sold by Panhandle (i) to Anchor-Hocking for its own use at its said industrial plant near Winchester, and (ii) to Indiana-Ohio Public Service Company for resale to consumers in and adjacent to Winchester, Portland and Union City in Indiana and Union City in Ohio. Adjacent to the northeast corner of the corporate limits of the Town of Winchester, Indiana, Panhandle has two meter houses located approximately 400 feet apart, both of which houses are located on plant property of Anchor-Hocking (owned prior to April 6, 1931 by Turner Glass Company). In one of these houses, are the regulators and meters used in connection with deliveries to Anchor-Hocking. In the other are the regulators and meters used in connection with deliveries to the Indiana-Ohio Public Service Company. A branch of the Winchester line runs directly into the meter house serving Anchor-Hocking. Another branch of the Winchester line runs directly into the meter house serving said Indiana-Ohio Public Service Company. Gas enters both meter houses at the same pressure, which (by reason of the natural fall in pressure occurring in the Winchester line between these points and the main line) is about 80 pounds per square inch. At the Anchor-Hocking meter house the gas passes first through a regulator which reduces the pressure to approximately 40 pounds per square inch. The gas then passes through two orifice meters into a header. From this header a four inch service line carries the gas into the

glass plant at the metering pressure (40 pounds per square inch). From this header gas also passes into another [fol. 74] regulator in the meter house which reduces the gas to a pressure of approximately 10 pounds per square inch. From this regulator the gas at such pressure passes through a ten-inch line directly into the glass plant. Anchor-Hocking takes possession of all the gas delivered to it at the outlet side of Panhandle's meter house (designated in the contract as "measuring station"). All the facilities (other than the real estate itself) up to the said point at which Anchor-Hocking takes possession of said gas are owned and operated by Panhandle. Anchor-Hocking maintains within its own plant other regulators whereby it further reduces the pressure of the gas received in the four inch line and in the ten-inch line after it has accepted delivery thereof from Panhandle. At the meter house serving Indiana-Ohio Public Service Company the gas passes first through a regulator which reduces the pressure to a pressure which is maintained at approximately 9 pounds per square inch in the summer and approximately 25 pounds per square inch in the winter. From this regulator the gas passes through two orifice meters into a header from which it passes through a pipe which connected with a four inch line owned by Indiana-Ohio Public Service Company. Indiana-Ohio Public Service Company maintains on its own system other regulators whereby the pressure of the gas is further reduced. Indiana-Ohio Public Service Company takes possession of all the gas delivered to it at the outlet side of Panhandle's meter-house (designated in the contract as "measuring station"). All of the facilities (other than the real estate itself) up to the said point at which Indiana-Ohio Public Service Company takes possession of said gas are owned and operated by Panhandle. In making deliveries of gas to distributing companies generally over its system, Panhandle maintains regulators at its town border metering [fol. 75] stations and, before delivery of the gas, reduce the pressure thereof to such pressure as the distributing company desires to meet operating conditions on the system of the distributing company. Until Michigan Gas commenced the sale of natural gas to Indiana-Ohio Public Service Company in November 1934 no gas transported through the Winchester line was sold to any person, firm

or corporation except gas sold to Indiana Gas for resale to Anchor-Hocking.

25. In 1943, Panhandle sold 1,150,279 cubic feet of natural gas to Anchor-Hocking and 151,065 cubic feet of natural gas to Indiana-Ohio Public Service Company.

26. Prior to February 6, 1942, when Panhandle acquired the properties of Ohio Fuel, as stated in paragraph numbered 7 hereof, the regulators and meters which were in the said regulator station adjacent to Winchester, Indiana were owned by Ohio Fuel.

27. On June 11, 1929 Ohio Fuel was admitted to do business in the State of Indiana. A copy of its Certificate of Admission is attached to this stipulation as "Exhibit O" and is hereby made a part hereof. Said Certificate of Admission has been continuously in force and effect since June 11, 1929. The Winchester line is located in part on certain public county highways in Randolph County and pursuant to authority granted by the Board of County Commissioners of said County by resolution dated April 23, 1931, and recorded in the Commissioners' Record No. 23, page 106, Randolph County Records. A copy of the records of said Board granting said authority is attached hereto as "Exhibit P", and is hereby made a part hereof.

[fol. 76] 28. No franchise authorizing the sale or delivery of natural gas under said contract, dated May 11, 1942, between Panhandle and Anchor-Hocking has been acquired by Panhandle from the State of Indiana or any agency thereof or is claimed by Panhandle to have been acquired. The Prospectus, dated July 12, 1944, issued by Panhandle in connection with the registration under the Securities Act of 1933, and the sale, of shares of the common stock of Panhandle (Registration File No. 2-5390 before the Securities and Exchange Commission), contains the following statements (i) "The Company holds its charter powers from the State of Delaware and its licenses to transact its business in the States of Texas, Oklahoma, Missouri, Illinois, Indiana, Kansas and Michigan"; and (ii) "In the opinion of counsel for the Company, the Company is not subject to the jurisdiction of any commission or other regulatory body of any State in which its properties are located either (a) with respect to rates, with the possible exception of the States of Kansas and Texas where, in the

opinion of said counsel, the Company transacts some business in intrastate commerce, or (b) with respect to the issuance of securities, with the possible exception of the State of Kansas."

29. Tariffs covering the rates and charges made by Panhandle for all gas sold by it to persons, firms or corporations for resale to ultimate consumers have been filed by Panhandle with the Federal Power Commission pursuant to the requirements of the Natural Gas Act and of the rules and regulations promulgated by said commission under said act; and said tariffs are now on file with said commission and in force and effect.

[fol: 77] 30. On June 10, 1942, Panhandle filed with the Federal Power Commission, in conformity with Section 54.30 of Part 54 of the "Provisional Rules of Practice and Regulations under the Natural Gas Act," as amended by Order No. 81 issued January 21, 1941, its said contract dated May 11, 1942, with Anchor-Hocking. It has not filed with the Public Service Commission of Indiana any tariffs of rates, or any rules or regulations, relating to the sale of natural gas to Anchor-Hocking.

31. All rules, regulations and general orders promulgated by the Federal Power Commission under the Natural Gas Act may, without their incorporation herein, be considered by the Public Service Commission of Indiana the same as though incorporated in this stipulation.

32. Panhandle has at no time filed with the Public Service Commission of Indiana any annual report or any other periodic report.

33. Panhandle has at no time filed with the Public Service Commission of Indiana an original cost report appertaining to any portion of its property in Indiana.

34. Panhandle has not purported to keep books, accounts, papers or records in the manner required under the orders and directions of the Public Service Commission of Indiana for public utilities subject to the jurisdiction thereof. Panhandle in keeping its books, accounts, papers and records is subject to the rules and regulations of the Federal Power Commission.

35. Under date of May 15, 1939, Mr. G. J. Neuner, then vice-president in charge of operations of Panhandle, wrote

to Mr. J. D. Creveling, then president of Panhandle, a letter relative to the natural gas service to Anchor-Hocking, which letter is as follows:

[fol. 78] "PANHANDLE EASTERN PIPE LINE COMPANY  
101 West Eleventh Street,  
Kansas City, Mo.

May 15, 1939

"J. D. Creveling, President; Panhandle Eastern Pipe Line Company, Ninety Broad Street, New York, New York.

"DEAR JOE:

"Some time ago you suggested that we prepare for your information a memoranda history of sales and deliveries of gas to Anchor-Hocking Glass Company (formerly General Glass Corporation) at Winchester, Indiana. Since that time I have had some conversations with you as well as with Mr. Goodwin, and as I recall we came to the conclusion that you and Mr. Goodwin already have the required information with respect to deliveries since August 1, 1936, the date of the industrial gas contract between Panhandle Eastern Pipe Line Company and Michigan Gas Transmission Corporation.

"As you know, all sales of gas prior to August 1, 1936, to Michigan Gas Transmission Corporation for resale in Indiana were made at a flat price of 18¢ per MCF. We have no accurate record in this office as to the disposition made of this gas by Michigan Gas Transmission Corporation prior to that date, and we do not definitely know whether sales prior to August 1, 1936 to Anchor-Hocking Glass Company were made through the instrumentality of Indiana Gas Distribution Corporation except insofar as copies of documents in our file would appear to reflect the fact that these sales were, from the beginning, made through that company. For example, we have in our files a conformed copy of an agreement dated November 1, 1935, between Indiana Gas Distribution Corporation, as Seller, and General Glass Corporation, as Buyer, cov-

ering the fuel requirements of the Buyer for glass melting, refining, and finishing at Buyer's plant located at Winchester, Indiana. The term of this agreement is stated to be three years, beginning with the meter reading on November 15, 1935, and ending with the meter reading on November 15, 1938. This particular contract contains a recital as follows:

'That, Whereas, Seller is furnishing and delivering to Buyer, and Buyer is taking and purchasing from Seller, all natural gas required as total fuel requirements for all glass melting, refining, and finishing operations at Buyer's plant located at Winchester, Indiana, under the terms and provisions of a contract entered into under date of April 22, 1931.'

This recital would seem to indicate that Indiana Gas Distribution Corporation has been serving this glass [fol. 79] plant since April 22, 1931.

"According to our information, Michigan Gas Transmission Corporation's license to do business in Indiana permits it to sell gas in Indiana for resale only. It is my understanding that Michigan Gas Transmission Corporation did not qualify to sell gas to consumers directly because it was deemed desirable to avoid regulation by the Indiana commission. Incidentally, the license of Panhandle Eastern Pipe Line Company in the State of Indiana is of like effect, and under present conditions, Panhandle Eastern Pipe Line Company is not authorized to make direct sales in that state. I have asked Mr. Clark to investigate the statutes of Indiana to determine whether or not a foreign corporation such as Panhandle Eastern Pipe Line Company and Michigan Gas Transmission Corporation could qualify and obtain the necessary authority to make direct sales in Indiana. A copy of Mr. Clark's letter to me on this subject is attached for your information. You will note that Mr. Clark concludes that so far as he is able to determine there are no restrictive provisions in the Indiana statutes which would prevent a foreign corporation from so qualifying in Indiana as to obtain the right to make direct sales to customers in that state.

Yours very truly, G. J. Neuner."

The said letter from Mr. Glenn W. Clark, who was then head of Panhandle's legal department, to Mr. G. J. Neuner, is as follows:

May 16, 1939

"Mr. G. J. Neuner

"Mr. Glenn W. Clark

"In accordance with your request, I have examined the Statutes of the State of Indiana to determine whether or not there is any restriction therein which would prohibit a foreign corporation from qualifying to make direct sales of natural gas. I have found no such restriction and I am of the opinion that any foreign corporation having a broad enough charter to allow it to engage in the business of making direct sales of natural gas could qualify to do so in the State of Indiana.

Very truly yours, (Signed) Glenn Clark."

GWC:m.

36. Each of the intervenors in this clause has filed with the Public Service Commission of Indiana sworn annual [fol. 80] reports for the years 1942 and 1943, as provided for by the Public Service Commission Act of the State of Indiana.

37. In the Registration Statement of Panhandle, which was filed by it with the Securities and Exchange Commission in connection with the registration under the Securities Act of 1933, and the sale, of \$10,000,000 principal amount of Panhandle's "First Mortgage and First Lien 3% Bonds, Series C, due January 1, 1962." Registration File No. 2-4919) and which became effective on January 12, 1942, Panhandle, in its answer to Item 41 relative to material contracts stated:

"The Company" (Panhandle) "had an agreement dated August 1, 1936 with Michigan Gas Transmission Corporation for the sale by the Company to it of natural gas for resale to distribution companies for resale in turn to special industrial customers in Indiana. This contract terminated by its terms at the end of five years and in May, 1941 the Company gave notice thereof to the Federal Power Commission. The Federal Power Commission notified the Company by tele-

gram on July 30, 1941 not to cancel the pertinent rate schedules until further direction of the Commission. Consequently, since that time, the Company has continued to sell natural gas to the Transmission Corporation at the same rates as provided in the expired contract, although the Company does not consider the contract to be any longer in effect. The Company proposes to make arrangements for selling the gas direct to such distribution companies."

38. The minutes of a special meeting of the board of directors of Panhandle, held March 11, 1941, contain the following:

"Excerpt from Minutes of a Special Meeting of the Board of Directors of Panhandle Eastern Pipe Line Company

March 11, 1941

#### *Future Development*

The Chairman then referred to his previous progress reports as to future development made at intervals during the last two years and made an oral report of discussions had with Consumers Power Company and Dow Chemical Company with respect to potential new markets in the State of Michigan. He stated that discussions and negotiations had with these two organizations had progressed to a point where Consumers Power Company had expressed a desire to arrange [fol. 81] with this Company for the purchase of a supply of gas for resale in Pontiac and Flint, Michigan, and that they might later be interested in the purchase of firm gas for resale in Jackson and Kalamazoo, Michigan, or for a floating dump load gas for fuel at certain of their generating stations. He stated further that an agreement had been reached with Dow Chemical Company for the sale of dump or floating load gas to that organization but that it was his judgment that sales to Dow Chemical Company might better await the general development of the Consumers Power Company markets in Michigan.

"After considerable discussion of these potential new markets, the Chairman stated that it was his opinion that if the Company desired to secure the

and imposed and which Seller is not required by law to collect from Buyer, the amount of such increased tax shall be added to the price to be paid by Buyer to Seller hereunder; provided, however, that in the event the amount of such additional tax, in the judgment of Buyer, shall operate to make the price of gas prohibitive to Buyer, then Buyer shall have the right and privilege of canceling and terminating this contract, and thereupon all obligations and liabilities of the parties hereunder shall cease, unless Seller shall notify Buyer in writing of its election to assume and pay such additional tax; provided, further, that such cancellation and termination shall not affect Buyer's obligation to pay for all gas theretofore delivered by Seller.

5. In the event Buyer shall fail to pay any bill, for gas delivered hereunder, within the time herein provided, Seller, in addition to any other remedy it may have, may, at its option, cancel and terminate this contract, provided that, such cancellation and termination shall not affect Buyer's obligation to pay for all gas theretofore delivered by Seller.

6. Seller agrees that the gas delivered hereunder shall be merchantable, and that the average total heating value of the gas, delivered in any one day, shall not be less than nine hundred fifty (950) nor more than one thousand fifty (1,050) British thermal units per cubic foot.

7. The unit of the gas delivered hereunder shall be the therm, consisting of one hundred thousand (100,000) British thermal units.

8. The number of therms delivered shall be determined by multiplying the number of cubic feet of gas delivered, measured on the measurement basis hereinafter specified and corrected to saturated conditions, by the total heating value of such gas in British thermal units per cubic foot and by dividing the product by one hundred thousand (100,000).

9. The measurement of volume and the determination of total heating value of gas delivered hereunder shall be made in the following manner:

(a) The unit of volume, for the purpose of measurement and for the determination of total heating value, shall be one (1) cubic foot of gas, saturated with water vapor, at a temperature of sixty (60) degrees Fahrenheit.

heit and an absolute pressure equivalent to that of thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit.

(b) The average absolute atmospheric pressure shall be assumed to be fourteen and four-tenths (14.4) pounds to the square inch, irrespective of actual elevation or location of the point of delivery above sea level or variations in such atmospheric pressure from time to time.

(c) The temperature of the gas flowing through the meters shall be assumed to be sixty (60) degrees Fahrenheit. Provided, however, Seller may, at its option, install a recording thermometer to record the temperature of the gas flowing through the meters, and where such installation is provided, the arithmetic average of the temperature recorded shall be used in computing measurements.

(d) The specific gravity and relative humidity of the gas delivered hereunder shall be determined by approved methods at the beginning of the delivery of gas and thereafter monthly or at such other times as is found expedient in practice.

(e) The deviation of the natural gas from Boyle's Law, at the pressures under which said natural gas is delivered hereunder, shall be determined at intervals of three (3) months or at such other intervals as is found expedient in practice.

(f) The total heating value of the gas delivered hereunder shall be determined by a recording calorimeter located at Seller's Glenarm Compressor Station or at such other place as may agreed upon.

10. The point of delivery of gas delivered hereunder shall be on the outlet side of Seller's measuring station at the point of connection between the facilities of Seller with those of Buyer.

11. Seller agrees to install, maintain and operate at its own expense, at or near the point of delivery, a meter or meters and other necessary measuring equipment to measure the gas delivered hereunder.

Northern Indian and Michigan markets not now served with natural gas it was essential to take immediate steps to occupy these markets as at least two other lines were being actively discussed for the area; that as a matter of fact Natural Gas Pipe Line Company of America, owner of one of the two lines referred to, had let contracts for the first 219 miles of its looping program to be constructed immediately; that the potential markets in the area outlined were sufficient in size to eventually justify two complete lines from the source of supply to the market area; and that no other unoccupied market was so immediately available to the Panhandle system. He stated further that the future expansion policy of this Company was, therefore, a matter that should be given immediate consideration, and that he desired the Board at this time to share with him the responsibility of determining that policy.

"It was the sense of the Board that contracts be worked out promptly with Consumers Power Company for the sale of gas for resale in Pontiac and Flint, Michigan; that such contracts be presented to the Board before or at its next meeting; and that if possible later to negotiate for the sale of natural gas for resale in Jackson and Kalamazoo, Michigan, together with fuel requirements at certain of its generating stations."

39. In the Registration Statement of Panhandle, which was filed by it with the Securities and Exchange Commission in connection with the registration under the Securities Act of 1933, and the sale, of \$24,000,000 principal amount of Panhandle's "First Mortgage and First Lien Bonds, Series A, 4%, due March 1, 1952," and which became effective on March 29, 1937. (Registration File No. 2-2867), Panhandle, in answer to Item 3 'Character of business done, and intended to be done (describe briefly):' stated:

[fol 82]

#### BUSINESS

"The Issuer, directly and through wholly owned subsidiary companies, is engaged in the production, purchase, transmission and sale of natural gas for domestic, commercial and industrial uses.

"The Issuer and its subsidiary company, Panhandle Illinois Pipe Line Company, operate a natural gas

transmission system extending from the Amarillo gas field in the Texas Panhandle through the States of Oklahoma, Kansas, Missouri and Illinois, to a point near Dana, Indiana, adjacent to the Illinois-Indiana state line. The Issuer produces part of its gas requirements and purchases the remainder under contracts, all as described below under the heading, "Property". The major part of the gas transmitted through the system is sold at wholesale to other gas transmission companies, and to distributing companies for resale; almost all the balance is sold to industrial customers.

"Under a contract dated August 31, 1935 between the Issuer and Detroit City Gas Company (which is not affiliated with the Issuer), providing for the sale of gas by the Issuer to that Company, the Issuer has since July 9, 1936 made and now is making delivery of gas to Michigan Gas Transmission Corporation (a subsidiary of Columbia Gas & Electric Corporation), which, pursuant to a contract with the Issuer dated March 17, 1936, has made and now is making deliveries of gas to Detroit City Gas Company for resale to its customers, numbering approximately 396,000, in Detroit, Michigan. These contracts, which extend for a fixed term of fifteen years, subject to cancellation for cause, are described in paragraphs 5 and 7, respectively of the answer to Item 46, to which reference is hereby made. The Issuer also sells gas to Michigan Gas Transmission Corporation for resale by that company to distributing companies, municipalities, and industrial customers in the State of Indiana.

"In addition to the gas sold as described in the foregoing paragraph, the Issuer and a wholly owned subsidiary sell gas to distributing companies and to approximately ten industrial customers in the states of Kansas, Missouri and Illinois. Deliveries to customers in Illinois are made by Panhandle Illinois Pipe Line Company under rate schedules, rules and regulations on file with the Illinois Commerce Commission. The distributing companies in Missouri, Kansas and Illinois to which gas sales are made serve approximately 118,000 customers (only approximately 3,500 of which are served directly by the Issuer's subsidiary companies). The more important distributing com-

12. Buyer shall have the right to be present at the time of an installing, reading, cleaning, changing, repairing, inspecting, calibrating or adjusting done in connection with Seller's measuring equipment used in measuring deliveries hereunder. The records from such measuring equipment shall remain the property of the Seller, but, upon the request of Buyer, Seller will submit such records and charts, together with calculations therefrom, for Buyer's inspection and verification, subject to return within ten (10) days after receipt thereof.

[fol. 90] 13. The accuracy of Seller's measuring equipment shall be verified by Seller at reasonable intervals, and whenever requested by Buyer, but Seller shall not be required to verify the accuracy of such equipment more frequently than once in any thirty (30) day period.

14. If, upon test, any measuring equipment (including recording calorimeter) is found to be not more than two (2) per cent fast or slow, previous recordings of such equipment shall be considered correct in computing the gas delivered hereunder; but such equipment shall be adjusted properly at once to record accurately. If, upon test, any measuring equipment is found to be inaccurate by an amount exceeding two (2) per cent, at a recording corresponding to the average hourly rate of flow for the period since the last preceding test, then any previous recordings shall be corrected to zero error, for any period which is known definitely or agreed upon, but, in case the period is not known definitely or agreed upon, such correction shall be for a period extending over one-half of the time elapsed since the date of last test, not exceeding a correction period of thirty (30) days.

15. Seller shall be in control and possession of the gas delivered hereunder and responsible for any damage or injury caused thereby, until the same shall have been delivered to Buyer at the point of delivery, after which, Buyer shall be deemed to be in control and possession thereof and responsible for any injury or damage caused thereby.

16. Each party shall indemnify and save harmless the other party on account of any and all damages, claims or actions arising out of the maintenance or operation of the property or equipment of the indemnifying party, the

panies include Central Illinois Electric & Gas Company, Central Illinois Light Company, Central Illinois Public Service Company, Illinois Power & Light Corporation and Missouri Power & Light Company.

"Natural gas is also sold at the wells to a non-affiliated transmission company for resale in approximately fifteen communities in southwestern Kansas.

[fol. 83] "Macon Gas and Electric Light Company, a subsidiary of the Issuer, is engaged in the production and distribution of manufactured gas to approximately 250 customers in the City of Macon, Missouri.

"On November 30, 1935, the Issuer filed applications under the Public Utility Act of 1935 for orders exempting it from the provisions of the Act on the grounds that it was only incidentally a holding company and that it was not a subsidiary of Columbia Gas & Electric Corporation, and declaring it not to be a gas utility company as defined in the Act, and joined in an application of Panhandle Illinois Pipe Line Company for an order declaring that company not to be a gas utility company. These applications were amended in their entirety on March 2, 1937, by the substitution therefor of applications under Section 3(a) (3) of the Public Utility Act of 1935 for an order exempting the Issuer from the provisions of the Act on the ground that it is only incidentally a holding company, being primarily engaged or interested in one or more businesses other than the business of a public utility company and that it does not derive any material part of its income from any subsidiary companies, the principal business of which is that of a public utility company; and under Section 2(a) (8) of the Act for an order declaring it not to be a subsidiary of Columbia Gas & Electric Corporation or of Columbia Oil & Gasoline Corporation, or of Missouri-Kansas Pipe Line Company, or of Gano Dunn, as Trustee for Columbia Oil & Gasoline Corporation, on the ground that the management or policies of the Issuer are not subject to a controlling influence directly or indirectly by any of such persons.

"Rule 2A 4-2, issued May 8, 1936, under the Public Utility Act of 1935 by the Securities and Exchange Commission contains, among other things, an interpretation of the words 'at retail' as used in the Act

point of delivery of the gas, as hereinbefore specified, to the point of division, of responsibility between the parties.

17. The natural gas to be sold hereunder, will be delivered by Seller to Buyer at main or lateral line pressures, without any reduction except such as Seller deems necessary to facilitate measurement and delivery.

18. The title to all meters, appliances, equipment, etc., placed on Buyer's premises and not sold to Buyer shall remain in Seller, with the right of removal at any time, and no charge shall be made by Buyer for use of premises occupied by same.

19. The obligation of Seller to sell and deliver gas hereunder shall be subject to Seller's right to curtail or interrupt deliveries of gas to Buyer, when, in Seller's judgment, such gas is needed to meet the requirements of other customers receiving service, either directly or indirectly, from the pipe line system of Seller, under classifications contemplating an uninterruptible supply of gas.

20. Neither party shall be liable to the other for any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, temporary failure of gas supply, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated, or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

21. All gas sold and delivered hereunder is intended solely for use as industrial fuel in Buyer's plant and shall not be diverted or sold by Buyer.

22. This contract is subject to valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction over either or both of the parties hereto, and shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

and provides that gas sold for resale or to industrial consumers for their own use shall not be deemed to be distributed 'at retail' within the meaning of the Act, and under this interpretation, the Issuer does not consider itself to be a gas utility company, as defined in the Act.

"The Public Utility Act of 1935 provides that the filing in good faith of applications of the nature described above shall exempt any applicant from any obligation, duty, or liability imposed by the Act upon the applicant as a holding company or as a subsidiary company, as the case may be, until the Commission has acted upon such application. As of the date of filing of this Registration Statement the Commission had not, so far as the Issuer is advised, taken any action with respect to the above mentioned applications.

"On January 29, 1937, a bill to regulate the transmission and sale of natural gas in interstate commerce (H. R. 4008) was introduced in the House of Representatives. The Issuer is unable to estimate the extent to which this or any similar bill, if enacted, might affect its business."

[fol. 84] 40. On or about February 6, 1942 (the date on which Panhandle acquired the outstanding stock of Indiana Gas) all the then serving members of the board of directors of Indiana Gas resigned and Panhandle elected as the members of said board the persons whose names are, and whose resident addresses then were, as follows:

Name	Residence Address
Joe D. Creveling	New York, N. Y.
Henry H. Heimann	New York, N. Y.
William G. Maguire	New York, N. Y.
Walter G. Mertland	New York, N. Y.
Richard C. Patterson, Jr.	New York, N. Y.

Each of said persons was at said time an officer, director or employee of Panhandle. Each of said persons served as a director of Indiana Gas from the said date of his initial election to June 18, 1942.

41. On March 23, 1942, the board of directors of Indiana Gas was increased to nine members, and four additional

23. This contract supersedes and cancels all previous contracts and agreements, between the parties hereto, with respect to the subject matter hereof.

24. This contract shall not be considered as renewed or extended beyond the term hereof, except by express agreement of the parties hereto in writing.

25. Any notice, statement or bill provided for in this contract, or any notice which either party may desire to give to the other, shall be in writing and shall be duly delivered when mailed, by either registered or ordinary mail, to the post office address of either of the parties hereto, as the case may be, as follows:

Seller: Panhandle Eastern Pipe Line Company, 1221 Baltimore Ave., Kansas City, Missouri.

Buyer: E. I. DuPont DeNemours & Company, Wilmington, Delaware.

[fol. 91] 26. Seller agrees to construct, at its sole expense, the necessary lateral line, to transport the gas delivered hereunder, to Buyer's plant. Seller shall not be liable, however, for failure to construct such line or to deliver gas hereunder if such failure is due to a denial of any requisite approval thereof by any governmental agency having jurisdiction.

27. Buyer agrees to purchase and take gas hereunder during the period beginning with the date of first delivery of gas hereunder and extending for twenty-four (24) months thereafter in such amounts that its payments to Seller for gas taken during such period will aggregate at least thirty thousand dollars (\$30,000); and, in the event that Buyer shall fail to take and pay for gas in such aggregate amount during such period of twenty-four (24) months, Buyer agrees to pay to Seller within fifteen (15) days after the expiration of said period, as liquidated damages, the difference between (a) the amount of money paid by Buyer to Seller for all gas actually purchased and taken hereunder during the said period and (b) the aforesaid minimum amount of thirty thousand dollars (\$30,000). It is understood and agreed, however, that if Seller should, during said period of twenty-four (24) months fail continuously for a period exceeding two (2) weeks to deliver gas to Buyer (Buyer being ready, able and willing to receive gas), then

directors were elected whose names are, and whose residence addresses then were, as follows:

Name	Residence Address
Robert J. Bulkley	Cleveland, Ohio.
A. Faison Dixon	New York, N. Y.
Gano Dunn	New York, N. Y.
Raymond A. Ransom	New York, N. Y.

Each of said persons was at said time a director or an employee of Panhandle. Each of said persons served as a director of Indiana Gas from the said date of his election to June 18, 1942.

42. On and prior to June 18, 1942 Panhandle was conducting negotiations for either the sale of the stock of Indiana Gas or the sale of the property and assets of Indiana [fol. 85] Gas. On June 18, 1942 at the adjourned annual meeting of the shareholders of Indiana Gas the directors elected were persons whose names are, and whose residence addresses then were, as follows:

Name	Residence Address
Joe D. Creveling	New York, N. Y.
William G. Maguire	New York, N. Y.
George W. Brian	Zionsville, Indiana
Leo G. Chaplain	Zionsville, Indiana
Ronald D. Hold	Zionsville, Indiana
Charles C. Manion	Zionsville, Indiana
James A. Osborne	Zionsville, Indiana
Elva Ratliff	Zionsville, Indiana
Theodore G. Shuder	Zionsville, Indiana

Said persons served as directors of Indiana Gas until on or about July 10, 1942, the date of the sale by Panhandle of the stock of Indiana Gas as set forth in paragraph 21 hereof.

43. All of the natural gas delivered by Panhandle to Anchor-Hocking is gas transported from the states of Texas or Kansas by Panhandle for the purpose and with the intent on the part of Panhandle that gas so transported in the quantities sold to Anchor-Hocking shall be delivered to it. Panhandle sells no gas to Anchor-Hocking and

said sum of thirty thousand dollars (\$30,000) shall be reduced by that amount which has the same ratio to thirty thousand dollars (\$30,000) which said period of time during which Seller continuously failed to deliver gas to Buyer has to the period of twenty-four (24) months.

28. Notwithstanding anything herein contained to the contrary this agreement shall be null and void if for any reason Seller shall not have commenced delivery of gas hereunder before the first day of September 1945.

In witness whereof, the parties hereto have caused this agreement to be signed by their respective Presidents or Vice Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secretaries, the day and year first above written.

Panhandle Eastern Pipe Line Company, by (Signed)  
Hy Byrd, Vice President. (Corporate Seal).

Attest: (Signed) Leith V. Watkins, Secretary.

E. I. DuPont DeNemours & Company, By (Signed)  
O. N. Davis, Assistant General Manager. (Corporate Seal).

Attest: (Signed) M. D. Fisher, Asst. Secretary.

[fol. 92] EXHIBIT "J-2" TO STIPULATION OF FACTS

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

Docket No. G607

In the Matter of the Application of PANHANDLE EASTERN PIPE LINE COMPANY for a Certificate of Public Convenience and Necessity Under and Pursuant to Section 7 of the Natural Gas Act, as Amended.

APPLICATION

Comes now Panhandle Eastern Pipe Line Company, hereinafter referred to as "Applicant," and, pursuant to the provisions of Section 7 of the Natural Gas Act, as amended,

transports in its pipe lines no gas originating in the State of Indiana.

Dated this 9th day of January 1945.

William F. Dudine, Public Counselor. George N. Beamer. Barnes, Hickam, Pantzer & Boyd by Alan W. Boyd, Attorneys for Respondent, Panhandle Eastern Pipe Line Company. Van Atta, Batton & Harker, Robert R. Batton, Attorneys for Intervenor, Central Indiana Gas Company. Wil- [fol. 86] liam A. McClellan, Attorney for Intervenor, Greenfield Gas Company, Inc. John E. Fell, Attorney for Intervenor, Kokomo Gas and Fuel Company. Lawyer and Anderson, John C. Lawyer, Attorneys for Intervenor, Northern Indiana Public Service Company. Evans & Hebel, Edmond W. Hebel, Attorneys for Intervenor, Public Service Company of Indiana, Inc. Ortmeyer, Bamberger & Ortmeyer, By Edmund F. Ortmeyer, Attorneys for Intervenor, Southern Indiana Gas and Electric Company.

(Here follows Exhibit C, side folio 87)

applies for a Certificate of Public Convenience and Necessity to construct and operate the facilities hereinafter particularly described, and in support of such application respectfully submits:

1. Applicant is a corporation, organized and existing under the laws of the State of Delaware, with principal offices at 135 South La Salle Street, Chicago 3, Illinois, and at 1221 Baltimore Avenue, Kansas City 6, Missouri, and owns and operates an integrated natural gas pipe line system situated in the states of Texas, Oklahoma, Kansas, Missouri, Illinois, Indiana, Ohio and Michigan. Applicant is a "natural-gas company," as defined in the Natural Gas Act. It produces and purchases natural gas in the states of [fol. 93] Texas and Kansas and purchases gas in the State of Oklahoma and is engaged in the transportation and sale of such gas in interstate commerce (a) for resale for ultimate public consumption for domestic, commercial, industrial and other uses, and (b) directly to industries and to others for purchasers' own use.
2. As authorized by Section 57.5 of the Provisional Rules of Practice and Regulations under the Natural Gas Act, as amended; Applicant respectfully refers the Commission to the applications as supplemented and amended, heretofore filed by Applicant and its former subsidiaries, Illinois Natural Gas Company and Michigan Gas Transmission Corporation, under Section 7 of the said Act, as amended, in Docket Nos. G-254, G-452 and G-459, for a concise and comprehensive description of its corporate organization and structure, of its business operations and properties, of its gas reserves and of the gas companies and other customers served by it and of the areas served by such customers. The said applications, as supplemented and amended, with all exhibits filed therewith are herein incorporated by reference.
3. All communications in respect to the within application are to be addressed to John S. L. Yost, Counsel for Applicant, at 135 South La Salle Street; Chicago 3, Illinois.
- [fol. 94] 4. Applicant submits that during the period of approximately twelve (12) months prior to December 5,

1944, it was carrying on negotiations with Eastern Indiana Gas Company, a distribution company, having its principal office at New Castle, Indiana, and which company distributes gas in the town of Fortville, Hancock County, Indiana, for the sale to that company of the latter's requirements of natural gas at Fortville; further, that as of December 5, 1944, a written agreement was executed with the said company for the sale to said company of its requirements of natural gas for distribution and resale in the towns of Fortville and McCordsville, Hancock County, Indiana, and in the town of Ingalls, Madison County, Indiana. A conformed copy of the said agreement is hereto attached and marked "*Exhibit A*" and made a part of this application.

5. In order to effectuate deliveries of gas at the town border of Fortville, under the aforesaid contract, it will be necessary to construct and operate a three-inch pipe line, having its beginning or eastern terminus, at a point on the 4" lateral pipe line, known as the "Greenfield Lateral", in Section Seven (7), Township Seventeen (17) North, Range Seven (7) East, Hancock County, Indiana, and extending in a westerly direction approximately Three and Seven-tenths (3.7) miles to a point near the corporate limits of the town of Fortville, in Section Ten (10), Township Seventeen (17) North, Range Six (6) East, Hancock County, Indiana. The location of said proposed 3" line is more fully described in the plat marked "*Exhibit B*", attached hereto, and made a part of this application.

6. In connection with the operation of the said 3" pipe line, it will be necessary to construct and operate metering [fol. 95] and regulator stations and to install therein suitable meters and regulators. The locations of the said metering and regulator stations on the said 3" line are also indicated on the aforesaid plat, "*Exhibit B*", herein. The deliveries of gas to Eastern Indiana under the said agreement, for resale in the towns of Ingalls and McCordsville are dependent upon the construction of the necessary pipe line facilities by the said Company, connecting with the proposed 3" line.

7. In addition to the supplying of gas service to the said Eastern Indiana Gas Company, Applicant proposes to

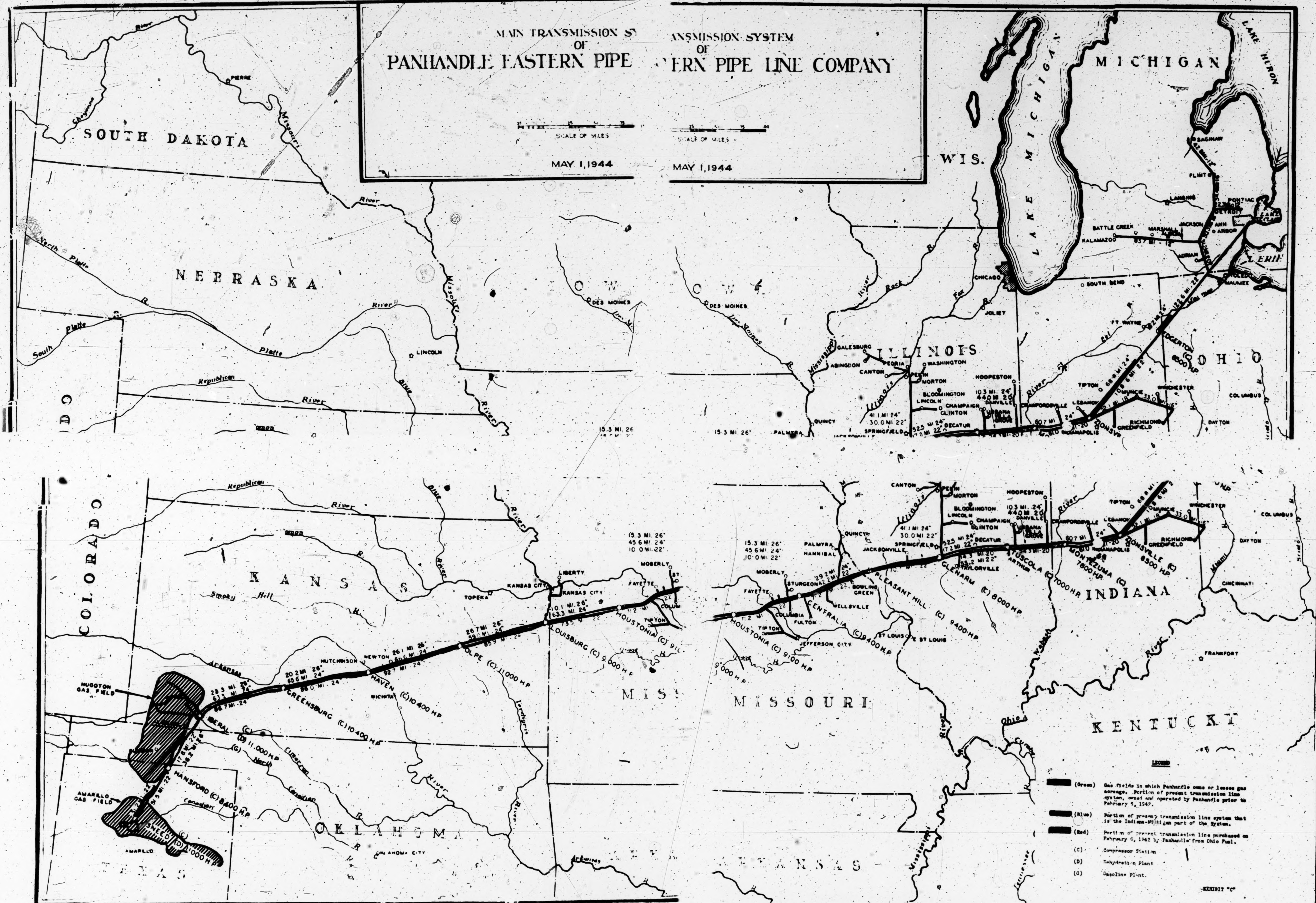
# MAIN TRANSMISSION SYSTEM OF PANHANDLE EASTERN PIPE TRANSMISSION SYSTEM OF ERN PIPE LINE COMPANY

SCALE OF MILES

MAY 1, 1944

SCALE OF MILES

MAY 1, 1944



- (Green) Gas fields in which Panhandle owns or leases gas acreage. Portion of present transmission line system, owned and operated by Panhandle prior to February 6, 1942.
- (Blue) Portion of present transmission line system that is the Indiana-Michigan part of the System.
- (Red) Portion of present transmission line purchased on February 6, 1942 by Panhandle from Ohio Fuel.
- (C) Compressor Station
- (D) Dehydration Plant
- (G) Gasoline Plant.

supply the fuel requirements of the E. I. DuPont DeNe-mours and Company, a corporation, having a plant situated at the outskirts of the said town of Fortville, which plant is engaged in the production of sodium silicate and utilizing open-hearth furnaces in such operation; and in this connection, Applicant states that during the course of its negotiations for the sale of gas to Eastern Indiana, it has also been carrying on negotiations with the officials of the said DuPont Company for the sale to that Company of its requirements of natural gas (on an interruptible basis) for fuel, utilized in the firing of the open-hearth furnaces of the said plant; further, that such negotiations are practically completed, but the contract covering the said sale has not yet been executed. Upon the execution of such contract, a conformed copy thereof will be filed with the Commission in this proceeding.

[fol. 96] 8. Upon the execution of the proposed contract with the said DuPont Company, it will be necessary to construct and operate a metering and regulator station and to install therein a suitable meter and regulator for the service of gas to the said industrial plant. The location of this metering and regulator station is also indicated on the aforesaid plat, "*Exhibit B*", herein.

9. The materials required to be used in the aforesaid proposed construction will be the necessary three-inch pipe, fittings, valves, meters, regulators and metering and regulator stations, all of which materials and supplies are either now in the warehouses of Applicant or may be obtained by Applicant for prompt delivery.

10. Applicant, further, represents that the "Greenfield Lateral", referred to in Paragraph "4" herein, connects with Applicant's 18" transmission pipe line at a point near the town of Pendleton, Madison County, Indiana. The proposed point of interconnection of the proposed 3" pipe line with the said Greenfield lateral is situated approximately five and one-half (5½) miles south of the northern terminus of the said lateral. The location of the said Greenfield lateral and of the towns in the surrounding area is more particularly described in the plat, marked "*Exhibit C*", attached hereto and made a part of this application.

## [fol. 88] EXHIBIT "J-1" TO STIPULATION OF FACTS

## INDUSTRIAL GAS CONTRACT

This Agreement, made and entered into as of the 14th day of December, 1944, by and between Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware, hereinafter referred to as "Seller," and E. I. DuPont De Nemours & Company, a corporation of the State of Delaware, hereinafter referred to as "Buyer":

Seller owns and operates a natural gas transmission system, used in the transmission and sale of natural gas, and has available certain quantities of natural gas which Seller desires to transport, sell and deliver to Buyer.

Buyer desires to purchase from Seller certain quantities of such natural gas for use in Buyer's plant located at Fortville, Indiana.

Now, Therefore, in consideration of the mutual covenants and agreements of the parties hereto, as herein set forth, the parties hereto covenant and agree as follows:

1. Seller agrees to transport, sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, natural gas for use in Buyer's plant located at Fortville, Indiana, subject to the terms and conditions hereof, for the term of five (5) years beginning with date of first delivery of gas hereunder and at the price of three and one-half (3½) cents per therm.

[fol. 89] 2. Seller shall render bills on or before the 10th day of each calendar month for all gas delivered hereunder during the preceding month.

3. Buyer agrees to pay Seller on or before the 15th day of each calendar month for all gas delivered hereunder during the preceding month.

4. Seller will add to and include in bills rendered to Buyer hereunder the amount of any tax, with respect to the sale or delivery of gas hereunder, which Seller is now or hereafter required by law to collect from Buyer and pay to any governmental agency.

If, at any time, during the term hereof, any governmental agency imposes or levies a production, severance, sales or excise tax, with respect to the natural gas sold and delivered hereunder, in excess of such tax as is now levied

11. Applicant estimates that the cost of the proposed pipe line and appurtenant facilities is as follows:

[fol. 97] Pipe Line Materials	\$ 6,240
Measuring and Regulator Station Equipment	3,180
Labor	17,430
Rights of Way and Damages	2,350
Contingencies	4,700
Total	<hr/> \$33,900

In connection with the aforesaid material costs, Applicant is advised that since such estimated costs are in a sum less than \$10,000, a preference rating order for the required material is not required from the War Production Board.

12. Applicant represents, further, that upon request filed by it with the War Production Board, that Agency on October 21, 1944 granted Applicant authority to make deliveries of gas to Eastern Indiana, up to 100,000 cubic feet per day, for resale and distribution by Eastern Indiana in the towns of Fortville, McCordsville and Ingalls, Indiana. A copy of the said authorization is hereto attached, marked "Exhibit D", and made a part hereof. And in this connection, Applicant submits that, if natural gas service is requested by Greenfield Gas Company to meet that Company's requirements for its consumers in the town of Fortville, Indiana, Applicant will render such service through the proposed facilities, in accordance with its applicable rates, terms and conditions, on file with this Commission.

13. The facilities covered by this application constitute a part of Applicant's general pipe line system, and if constructed they will be supervised and operated with the general system; therefore, it is impracticable at this time to attempt to allocate operating expenses and fixed charges specifically attributable to such facilities.

[fol. 98] 14. The construction of the proposed facilities will be financed through the use of funds which Applicant has on hand; and if the Certificate herein applied for is

granted by the Commission, Applicant is prepared to immediately commence the construction work and contemplates that it should be able to complete it and place the facilities in operation within a period of approximately thirty (30) days thereafter.

15. Applicant, further, represents that the construction and operation of the proposed facilities, if authorized by the Commission, will afford consumers in the said towns of Fortville, McCordsville and Ingalls, Indiana, relief from the present shortage of gas occasioned by the depletion of local gas fields from which their requirements had heretofore been largely supplied.

16. Applicant is able and willing properly to do the acts and perform the service proposed and to conform to the provisions of the Natural Gas Act, as amended, and the requirements, rules and regulations of the Commission thereunder.

Wherefore, Applicant prays that Federal Power Commission issue to Applicant a Certificate of Public Convenience and Necessity under Section 7 of the Natural Gas Act, as amended, for the construction, operation and maintenance of the facilities hereinabove described, and further prays that, pending the determination of this application, the Commission issue to Applicant a temporary Certificate of Public Convenience and Necessity, as provided for in the said Section 7 of the Natural Gas Act, as amended, and in Section 57.9, Order No. 99 of the Commission's Provisional Rules of Practice and Regulations under the said Act.

Respectfully submitted, Panhandle Eastern Pipe Line Company, by Vice President \_\_\_\_\_

[fol. 100] STATE OF MISSOURI,  
County of Jackson, ss:

\_\_\_\_\_, being first duly sworn, on oath says that he is Vice-President of Panhandle Eastern Pipe Line Company; that as such officer he has read the foregoing application and knows the contents thereof, and that the statements therein contained are true to his own knowledge, except as to those matters therein stated to be alleged upon

information or belief, and as to those matters he believes them to be true.

C. H. M. Burnham.

Subscribed and sworn to before me this — day  
of — —, 1944.

— —, Notary Public.

My Commission expires:

[fol. 10]

EXHIBIT "A"

September 21, 1944.

Panhandle Eastern Pipe Line Company, 1221 Baltimore  
Avenue, Kansas City, Missouri.

GENTLEMEN:

The undersigned desires, and hereby makes application, to purchase natural gas from you under your rate schedules Gd-1, on file with Federal Power Commission, for resale in the following communities: Fortville, McCordsville, and Ingalls, Indiana.

It is understood and agreed that all of the undersigned's gas requirements for resale as straight natural gas in the above specified communities and their environs do not exceed one hundred thousand (100,000) cubic feet per day, and you will not be obligated to deliver gas in excess of that amount.

The undersigned agrees to purchase natural gas for all of its gas requirements for resale as straight natural gas in the above specified communities and their environs from Panhandle Eastern Pipe Line Company, subject to the provisions of the above rate schedules and the General Terms and Conditions Section I, Sheets Nos. 10 to 16 inclusive, which by reference are hereby made a part hereof, during the period beginning September 21, 1944, and ending September 21, 1954, and thereafter until terminated upon six (6) months' prior notice.

Very truly yours, Eastern Indiana Gas Company, by  
(S.) Arthur B. Ayres, President. (Corporate Seal.)

Attest: (S.) W. P. Thurston, Asst. Secretary.

Accepted this 5 day of December, 1944.

Panhandle Eastern Pipe Line Company, by (S.) Hy  
Byrd, Vice President. (Corporate Seal.)

Attest: (S.) Leith V. Watkins, Secretary.

[fol. 102]

## EXHIBIT "B"

## Substitution Sheet

This sheet is in lieu of map showing location of the proposed 3" lateral to serve Fortville, Indiana.

[fol. 103]

## EXHIBIT "C"

## Substitution Sheet

This sheet is in lieu of map showing Portion of East-Central Indiana, Extending from Indianapolis to Ohio State Line.

[fol. 104]

## EXHIBIT "D"

## War Production Board

Washington 25, D. C.

In reply refer to: U-7, Tempo R, EMM.

October 21, 1944.

Panhandle Eastern Pipe Line Company, 135 South LaSalle Street, Chicago, Illinois.

Attention: Mr. O. W. Morton, Rate Engineer

GENTLEMEN:

This is in response to your letter of October 12, 1944, for authority to make deliveries of gas to Eastern Indiana Gas Company for general distribution in Fortville, McCordsville, and Ingalls, Indiana.

Pursuant to paragraph (b) (5) of Utilities Order U-7, as amended, you are hereby authorized to make deliveries of natural gas up to 100,000 cubic feet per day for resale and distribution in the above mentioned towns.

A copy of this letter is being sent to the Eastern Indiana Gas Company to serve as its authorization to receive such deliveries.

Very truly yours, by J. Joseph Whelan, Recording Secretary.

[fol. 105] EXHIBIT "N-1" TO STIPULATION OF FACTS

### Industrial Gas Contract

This Agreement, made and entered into as of the 11th day of May, 1942, by and between Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware, hereinafter referred to as "Seller," and Anchor Hocking Glass Corporation, a corporation of the State of Delaware, hereinafter referred to as "Buyer":

Seller owns and operates a natural gas transmission system, used in the transmission and sale of natural gas, and has available certain quantities of natural gas which Seller desires to transport, sell and deliver to Buyer.

Buyer desires to purchase from Seller certain quantities of such natural gas for use at Buyer's glass plant located at Winchester, Indiana.

Now, therefore, in consideration of the mutual covenants and agreements of the parties hereto, as herein set forth, the parties hereto covenant and agree as follows:

1. Seller agrees to transport, sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, natural gas for not less than seventy-five per cent (75%) of its fuel requirements for glass melting, refining and finishing at Buyer's plant located at Winchester, Indiana, subject to the terms and conditions hereof, for the term of One (1) year from date hereof and thereafter until the expiration of thirty (30) days after the receipt by either party hereto from the other party hereto of written notice of termination, and at the price of first 500,000 therms per month at Two and Sixty-eight Hundreths (2.68) cents per therm, next 500,000 therms per month at Two and Four-tenths (2.4) cents per therm, all over 1,000,000 therms per month at Two and Three-tenths (2.3) cents per therm.

[fol. 106] 2. Seller shall render bills on or before the 10th day of each calendar month for all gas delivered hereunder during the preceding month.

3. Buyer agrees to pay Seller on or before the 15th day of each calendar month for all gas delivered hereunder during the preceding month.

4. Seller will add to and include in bills rendered to Buyer hereunder the amount of any tax, with respect to the sale or delivery of gas hereunder, which Seller is now or hereafter required by law to collect from Buyer and pay to any governmental agency.

If, at any time, during the term hereof, any governmental agency imposes or levies a production, severance, sales or excise tax, with respect to the natural gas sold and delivered hereunder, in excess of such tax as is now levied and imposed and which Seller is not required by law to collect from Buyer, the amount of such increased tax shall be added to the price to be paid by Buyer to Seller hereunder; provided, however, that in the event the amount of such additional tax, in the judgment of Buyer, shall operate to make the price of gas prohibitive to Buyer, then Buyer shall have the right and privilege of cancelling and terminating this contract, and thereupon all obligations and liabilities of the parties hereunder shall cease, unless Seller shall notify Buyer in writing of its election to assume and pay such additional tax; provided, further, that such cancellation and termination shall not affect Buyer's obligation to pay for all gas theretofore delivered by Seller.

5. In the event Buyer shall fail to pay any bill, for gas delivered hereunder, within the time herein provided, Seller, in addition to any other remedy it may have, may, at its option, cancel and terminate this contract; provided that, such cancellation and termination shall not affect Buyer's obligation to pay for all gas theretofore delivered by Seller.

6. Seller agrees that the gas delivered hereunder shall be merchantable, and that the average total heating value of the gas, delivered in any one day, shall not be less than nine hundred fifty (950) nor more than one thousand fifty (1,050) British thermal units per cubic foot.

7. The unit of the gas delivered hereunder shall be the therm, consisting of one hundred thousand (100,000) British thermal units.

8. The number of therms delivered shall be determined by multiplying the number of cubic feet of gas delivered, measured on the measurement basis hereinafter specified and corrected to saturated conditions, by the total heating value of such gas in British thermal units per cubic foot and by dividing the product by one hundred thousand (100,000).

9. The measurement of volume and the determination of total heating value of gas delivered hereunder shall be made in the following manner:

(a) The unit of volume, for the purpose of measurement and for the determination of total heating value, shall be one (1) cubic foot of gas saturated with water vapor, at a temperature of sixty (60) degrees Fahrenheit and an absolute pressure equivalent to that of thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit.

(b) The average absolute atmospheric pressure shall be assumed to be fourteen and four-tenths (14.4) pounds to the square inch, irrespective of actual elevation or location of the point of delivery above sea level or variations in such atmospheric pressure from time to time.

(c) The temperature of the gas flowing through the meters shall be assumed to be sixty (60) degrees Fahrenheit. Provided, however, Seller may, at its option, install a recording thermometer to record the temperature of the gas flowing through the meters, and where such installation is provided, the arithmetic average of the temperature recorded shall be used in computing measurements.

(d) The specific gravity and relative humidity of gas delivered hereunder shall be determined by approved methods at the beginning of the delivery of gas and thereafter monthly or at such other times as is found expedient in practice.

(e) The deviation of the natural gas from Boyle's Law, at the pressures under which said natural gas is delivered hereunder, shall be determined at intervals of three (3) months or at such other intervals as is found expedient in practice.

(f) The total heating value of the gas delivered hereunder shall be determined by a recording calorimeter located at Seller's Glenarm Compressor Station or at such other place as may be agreed upon.

10. The point of delivery of gas delivered hereunder shall be on the outlet side of Seller's measuring station at the

point of connection between the facilities of Seller with those of Buyer.

11. Seller agrees to install, maintain and operate at its own expense, at or near the point of delivery, a meter or meters and other necessary measuring equipment to measure the gas delivered hereunder.

12. Buyer shall have the right to be present at the time of any installing, reading, cleaning, changing, repairing, inspecting, calibrating or adjusting done in connection with Seller's measuring equipment used in measuring deliveries hereunder. The records from such measuring equipment shall remain the property of the Seller, but, upon the request of Buyer, Seller will submit such records and charts, together with calculations therefrom, for Buyer's inspection and verification, subject to return within ten (10) days after receipt thereof.

[fol. 107] 13. The accuracy of Seller's measuring equipment shall be verified by Seller at reasonable intervals, and whenever requested by Buyer, but Seller shall not be required to verify the accuracy of such equipment more frequently than once in any thirty (30) day period.

14. If, upon test, any measuring equipment (including recording calorimeter) is found to be not more than two (2) per cent fast or slow, previous recordings of such equipment shall be considered correct in computing the gas delivered hereunder; but such equipment shall be adjusted properly at once to record accurately. If, upon test, any measuring equipment is found to be inaccurate by an amount exceeding two (2) per cent, at a recording corresponding to the average hourly rate of flow for the period since the last preceding test, then any previous recordings shall be corrected to zero error, for any period which is known definitely or agreed upon, but, in case the period is not known definitely or agreed upon, such correction shall be for a period extending over one-half of the time elapsed since the date of last test, not exceeding a correction period of thirty (30) days.

15. Seller shall be in control and possession of the gas delivered hereunder and responsible for any damage or injury caused thereby, until the same shall have been delivered to Buyer at the point of delivery, after which, Buyer

shall be deemed to be in control and possession thereof and responsible for any injury or damage caused thereby.

16. Each party shall indemnify and save harmless the other party on account of any and all damages, claims or actions arising out of the maintenance or operation of the property or equipment of the indemnifying party, the point of delivery of the gas, as hereinbefore specified, to be the point of division of responsibility between the parties.

17. The natural gas to be sold hereunder, will be delivered by Seller to Buyer at main or lateral line pressures, without any deduction except such as Seller deems necessary to facilitate measurement and delivery.

18. The title to all meters, appliances, equipment, etc., placed on Buyer's premises and not sold to Buyer shall remain in Seller, with the right of removal at any time, and no charge shall be made by Buyer for use of premises occupied by same.

19. The obligation of Seller to sell and deliver gas hereunder shall be subject to Seller's right to curtail or interrupt deliveries of gas to Buyer, when, in Seller's judgment, such gas is needed to meet the requirements of other customers receiving service, either directly or indirectly, from the pipe-line system of Seller, under classifications contemplating an uninterrupted supply of gas.

20. Neither party shall be liable to the other for any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, temporary failure of gas supply, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated, or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

21. All gas sold and delivered hereunder is intended solely for use as industrial fuel in Buyer's plant and shall not be diverted or sold by Buyer.

22. This contract is subject to valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction over either or both of the parties hereto, and shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

23. This contract supersedes and cancels all previous contracts and agreements, between the parties hereto, with respect to the subject matter hereof.

24. This contract shall not be considered as renewed or extended beyond the term hereof, except by express agreement of the parties hereto in writing.

25. Any notice, statement or bill provided for in this contract, or any notice which either party may desire to give to the other, shall be in writing and shall be duly delivered when mailed, by either registered or ordinary mail, to the post office address of either of the parties hereto, as the case may be, as follows:

Seller: Panhandle Eastern Pipe Line Company, 1221 Baltimore Ave., Kansas City, Missouri.

Buyer: Anchor Hocking Glass Corporation at Winchester, Indiana.

Make billings to: Anchor Hocking Glass Corporation, Lancaster, Ohio.

[fol. 108] In Witness Whereof, the parties hereto have caused this agreement to be signed by their respective Presidents or Vice Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secretaries, the day and year first above written.

Panhandle Eastern Pipe Line Company, by G. J. Neuner, Vice President.

Attest: N. F. Paxton, Asst. Secretary.  
(Corporate seal.)

Anchor Hocking Glass Corporation, By Wm. V. Fisher, Vice President. (Corporate seal.)

Attest: Hugh C. Laughlin, Secretary.

[fol. 109] STATE OF INDIANA, PUBLIC SERVICE COMMISSION  
OF INDIANA

Cause No. 16741

In the Matter of the Investigation by the Commission in Respect of the Distribution by Panhandle Eastern Pipe Line Company, as a Public Utility, of Natural Gas to Consumers, Within the State of Indiana.

STIPULATION OF EVIDENCE

It is agreed by and between the parties to this stipulation that Kokomo Gas and Fuel Company, Public Service Company of Indiana, Inc. and Central Indiana Gas Company would have offered in evidence at the hearing in the proceedings in this cause the material contained in paragraph No. 14, paragraphs No. 15 to 17, inclusive, and paragraphs No. 18 to 27, inclusive, respectively, contained in a draft of proposed stipulation bearing date of November 22, 1944, a copy of said paragraphs being set out below. The material contained therein shall be considered as evidence in this cause, said material containing the substance of what witnesses on behalf of said respective intervenors would have stated in oral testimony and what would have been offered as documentary proof as part of the record in said cause through the testimony of said witnesses.

It is expressly agreed by the parties to this stipulation, however, that all of the evidence offered herein and hereby is and shall be subject to any object which Panhandle Eastern Pipe Line Company may assert as to the relevancy or materiality of any evidence herein stipulated, or its right to take and preserve an exception to any ruling by the Public Service Commission of Indiana to any objection by said party to the relevancy or materiality of such evidence, provided, however, that any such objection or objections shall be made in writing and filed with Public Service Commission of Indiana in this cause not later than March 29, 1945. Any objection not so taken shall be deemed as waived.

14. Under date of June 8, 1943, Mr. Edward M. Hahn, vice-president and general manager of Kokomo Company, wrote to Panhandle relative to a draft of a renewal contract (hereinafter called the "Continental Supply Con-

tract") covering natural gas for resale to an industrial consumer, Continental Steel Corporation, at the plant of said industrial consumer in Kokomo, Indiana. The expiration date of such contract was November 1, 1943. Under date of June 24, 1943, Panhandle replied to said letter by [fol. 110] acknowledging receipt thereof, and advising Kokomo Company that the renewal of the Continental Supply Contract was being considered and that Panhandle would soon be in a position to discuss the matter further with Kokomo Company. In the afternoon of June 29, 1943, Mr. O. W. Morton, rate engineer of Panhandle, and Mr. George Ballard, industrial gas sales engineer of Panhandle, called on said Mr. Hahn and Mr. Elmer E. Linburg, a vice-president of Kokomo Company and vice-president and general manager of Richmond Gas Corporation, at the office of Kokomo Company in Kokomo, Indiana. Mr. Morton stated that Panhandle desired, and was planning in the future, to make all industrial gas supply contracts, such as the one between Kokomo Company and Continental Steel Corporation, direct with the industrial consumers; that some arrangement would have to be worked out whereby the interest of Kokomo Company in such gas sales would be continued; but the ultimate consumer would no longer be a customer of Kokomo Company but would be a customer of Panhandle; that if Panhandle sold direct to Continental Steel Corporation, the sale would not come under the jurisdiction of the Federal Power Commission; and that such was the chief objective of Panhandle in making such contracts direct with the industrial consumers. Mr. Hahn stated that Kokomo Company would not be a party to the proposed arrangements. Mr. Morton stated that he and Mr. Ballard desired to contact the representatives of Continental Steel Corporation and that they had been instructed by Panhandle to contact such representatives whether or not representatives of Kokomo Company accompanied them in such a meeting. Messrs. Hahn and Linburg expressed a desire to be present at any such meeting, and Mr. Hahn arranged for an appointment with Mr. D. A. Williams, president of said Continental Steel Corporation. On the morning of June 30, 1943, said Messrs. Morton, Ballard, Hahn and Linburg met with said Mr. Williams and Mr. Ralph K. Clifford, vice-president in charge of operations of said Continental Steel Corporation. At such meeting, said Mr. Morton again explained the position

of Panhandle and stated that it would be the intention of Panhandle to make all contracts for supplying gas to large industrial consumers direct with such consumers and [fol. 111] that Panhandle hoped to be able to make such arrangements with said Continental Steel Corporation. Under date of October 11, 1943, Panhandle forwarded to Kokomo Company for acceptance an extension of the Continental Supply Contract which provided for termination by either party on 60 days written notice. On October 19, 1943, Kokomo Company accepted such extension agreement, and on said date, Kokomo Company and said Continental Steel Corporation made a supplemental agreement to their above mentioned existing natural gas supply contract fixing a like termination period. On October 20, 1943, a copy of said supplemental agreement was filed with the Public Service Commission of Indiana by Kokomo Company, and on October 22, 1943 the same was approved by said commission.

15. On the afternoon of June 30, 1943, said Messrs. Morton and Ballard called on Mr. G. J. Oglebay, vice-president of Service Company, and Mr. Herman Horstman, superintendent of gas and water transmission and distribution of Service Company. The meeting was held in connection with the matter of a supply of natural gas for the Ingersoll Steel and Disc Division of the Borg Warner Corporation (hereinafter called "Ingersoll Company"), a large industrial consumer, at New Castle, Indiana, being supplied by Service Company under an interruptible gas contract for a term ending on July 31, 1943. Such gas was obtained by Service Company from Panhandle under a special industrial customer agreement (hereinafter called the "Ingersoll Supply Contract") for a term ending on July 31, 1943. At that meeting Mr. Morton stated that the purpose of their visit was in connection with the resale of gas to interruptible customers served by Service Company; that the Federal Power Commission had previously ruled that direct sales of gas to consumers of pipe line companies were not subject to regulation by such commission; that Panhandle desired to sell as much industrial load direct to industries as possible in order to remove this segment of its business from the jurisdiction of such commission; that Panhandle proposed to sell direct to the industrial consumers at the points of interconnection between the facilities of Panhandle

and the present distributing utilities, that the facilities of [fol. 112] the present distributing utilities would be utilized to transmit the natural gas for the account of the industrial consumers, who would reimburse the distributing utilities in an amount approximating the 20% of the rate being received by them on the sale of the interruptible natural gas; that present plans of Panhandle contemplated limiting the size of interruptible industrial consumers that Panhandle desired to serve direct to such consumers as had a monthly consumption of about 10,000,000 or more cubic feet of gas; and that he had been directed by Panhandle to outline the plan to the separate industrial consumers now served with interruptible gas by Service Company.

16. On July 1, 1943, said Messrs. Morton and Ballard called on Mr. Roy M. Atwater, assistant superintendent of Ingersoll Company, and Mr. Howard Warfield, purchasing agent of said company, at the industrial plant of said company at New Castle, Indiana. At this meeting Mr. Morton stated that Panhandle intended to serve natural gas direct to the said plant of Ingersoll Company, and likewise intended to serve direct all other large industrial gas consumers up and down the pipe line of Panhandle. Mr. Morton and Mr. Ballard referred to certain industrial consumers in the vicinity of Kansas City, whom they stated Panhandle was already serving and to whom they stated Panhandle was giving superior service.

17. Under date of July 19, 1943, Panhandle forwarded to Service Company for acceptance an extension of the Ingersoll Supply Contract which provided for termination by either party on 60 days written notice. On July 29, 1943, Service Company accepted such extension agreement, and under date of July 30, 1943 Service Company and said Ingersoll Company entered into a supplemental agreement to their above mentioned existing natural gas supply contract fixing a like termination period. On August 5, 1943 a copy of said supplemental agreement was filed with the Public Service Commission of Indiana by Service Company, and on August 13, 1943 the same was approved by said commission.

[fol. 113] 18. Early in 1941 Panhandle and intervenor Central Indiana Gas Company (hereinafter called "Central Gas"), an Indiana corporation, were in process of nego-

tiating the terms and provisions of a new gas supply contract. Panhandle initially submitted to Central Gas its printed form of proposed contract. In May 1941, in the course of such negotiations, Central Gas requested of Panhandle that such contract contain a provision which, in substance, would prohibit Panhandle from serving directly natural gas to consumers served directly by Central Gas located within its service area without the consent of Central Gas. Panhandle refused to include any such provision in any form. Such negotiations were conducted on behalf of Panhandle by Mr. G. J. Neuner, vice-president in charge of operations of Panhandle, located in its office in Kansas City, Missouri, and Mr. R. A. Ransom, a director and employee of Panhandle located in its office in New York City. Attached hereto as "Exhibit H-1" and hereby incorporated herein is a copy of letter from Mr. G. B. Pidot, acting on behalf of Central Gas, to Mr. W. L. Glenn, general counsel for Panhandle, dated June 5, 1941, with respect to such proposed provision in the contract under negotiation.

19. Panhandle and Central Gas, respectively, executed and delivered a new gas supply contract dated July 31, 1941, a copy of which is attached hereto as "Exhibit I" and is hereby made a part hereof. Said contract was executed and delivered by said companies on or about 31, 1941. Panhandle subsequently informed Central Gas that its board of directors refused to approve said contract. Attached hereto as "Exhibit J" is a copy of letter from Panhandle to Central Gas, dated August 28, 1941, to which is attached a proposed form of amendment to said contract. Said proposed letter of amendment contains the following statement:

"However, it was indicated (by the Board of Directors of Panhandle) if a reasonable limit were placed on the term said contract (dated July 31, 1941) with respect to the sale of gas for resale to Special Industrial Customers and Off-Peak Customers, the contract probably would meet with the approval of the Board. You have represented to us that you are now committed to certain of your Special Industrial and Off-Peak Customers for terms exceeding one year from and after August 1, 1941. We are willing to recommend to the Board that these obligations be recognized."

20. Numerous conferences were held between representatives of Central Gas and representatives of Panhandle in the period from August 1941 to August 1942 or thereabouts, negotiating on the provision in said new gas supply [fol. 114] contract, dated July 31, 1941, relating to natural gas service to so-called Special Industrial and Off-Peak Customers. One such conference was held in October 1941 in Washington, D. C. at which Central Gas was represented by its president, Mr. G. T. Henry, and by Mr. P. R. Taylor, and Panhandle by Mr. J. D. Creveling and said Mr. G. J. Neuner, its president and vice-president, respectively. Another such conference was held in New York City on March 6, 1942 attended by said Mr. R. A. Ransom on behalf of Panhandle and said Mr. G. B. Pidot on behalf of Central Gas. Still another such conference was held on April 22, 1942 in Washington, D. C. attended by said Mr. J. D. Creveling on behalf of Panhandle, and said Messrs. B. T. Henry and G. B. Pidot on behalf of Central Gas. Another such conference was held on April 23, 1942 in New York City attended by Mr. E. N. Goodwin, general counsel of Panhandle, and said Mr. R. A. Ransom on behalf of Panhandle, and by said Mr. P. R. Taylor, G. T. Henry and G. B. Pidot on behalf of Central Gas. At several of these conferences, and particularly the conference on April 23, 1942 in New York City, the representatives of Panhandle stated that the refusal of the board of directors of Panhandle to approve the new gas supply contract dated July 31, 1941 was based upon the policy that Panhandle should undertake at sometime or other to serve directly some or all of these industrial consumers which are being served by Central Indiana with natural gas purchased by Central Indiana from Panhandle.

21. On August 4, 1942, Central Gas directed to the Federal Power Commission in Washington, D. C. for filing under the Natural Gas Act a petition, copy of which is attached hereto as "Exhibit K" and is hereby made a part hereof. Paragraph 4 of said petition reads, in part, as follows:

"4. On April 23, 1942, Panhandle stated to the Petitioner that the Board of Directors of Panhandle would authorize the new contract but only if it were amended so that Panhandle would not be required to sell gas to the Petitioner for resale to any of its interruptible

industrial customers except for those such customers specifically named (on pages 4 and 5) in the new contract, and only for the period of the contracts then in effect between the Petitioner and the said customers. It is the position of Panhandle that, although it may have both the gas and the ability to deliver it to the Petitioner, it will not sell to the Petitioner, on the basis of the applicable rate schedule provided in the new contract, gas for resale to any other such industrial customers or to such industrial customers (specifically named in the new contract) beyond a fixed period. Panhandle has announced to the Petitioner [fol. 115] that its policy underlying that position, is to take over and serve directly such industrial customers which it refuses to serve through the Petitioner."

22. Attached hereto as "Exhibit L" and hereby made a part hereof is a copy of a notice of cancellation or termination, dated May 18, 1943, by Panhandle to the Federal Power Commission, notifying said commission of the proposed cancellation on specified dates in July and August of 1943, of rate schedules therein identified, covering natural gas purchased by Central Gas from Panhandle for resale for ultimate consumption by fourteen industrial customers of Central Gas, named in said notice.

23. On June 3, 1943, said Mr. G. T. Henry and G. B. Pidot, conferred with Mr. W. G. McGuire and Mr. C. Buddruss, chairman of the board and president, respectively, of Panhandle, in the Chicago office of Panhandle, with respect to the threat or attempt by Panhandle, in connection with said notice of cancellation of rate schedules covering natural gas purchased by Central Gas for resale to fourteen of its large industrial customers, to undertake to serve such customers directly. These representatives of Panhandle stated that Panhandle was interested in serving directly certain industrial customers of Central Gas but on some basis which would make such direct service by Panhandle outside of the jurisdiction of the Federal Power Commission under the Natural Gas Act. Said Mr. W. G. McGuire stated at such conference that Panhandle was anxious to take over such business because it was unregulated transaction both as to the Federal Power

Commission and the Public Service Commission of Indiana and that he intended to establish higher industrial rates based on a competitive fuel basis. On or about June 11, 1943 said Messrs. W. G. McGuire, C. Buddruss and I. L. Letts, as representatives of Panhandle, the last named being its general counsel, and said Messrs. G. T. Henry, L. N. Boisen and G. B. Pidot, as representatives of Central Gas, conferred in the office of said Mr. W. C. McGuire in New York City. The representatives of Panhandle stated in substance that Panhandle intended to take over direct service to certain of the large industrial customers of Central Gas and any negotiations would have to be with that eventuality in mind.

24. Attached hereto as "Exhibit M" and hereby made [fol. 116] a part hereof is a copy of a letter of Central Gas to the Federal Power Commission, dated August 9, 1943, which is, as therein stated, "in reply to your (Federal Power Commission) letter of May 29, 1943, requesting information on the effect of notice of cancellation or termination dated May 18, 1943 by Panhandle Eastern Pipe Line Company filed with the Federal Power Commission, relating to certain rate schedules therein described for natural gas service to Central Indiana Gas Company for resale to industrial consumers." Said letter contains, in part, the following:

"It is the declared policy and intention of Panhandle Eastern Pipeline Company to abandon service to Central Indiana Gas Company for resale to these industrial consumers, and to try to take over and serve directly these industrial consumers so that the rates to be charged therefor will be beyond the regulatory control of the Federal Power Commission. Since it is patently impossible, as shown by the attached map, for Panhandle Eastern Pipeline Company now to serve these industrial consumers except by means of the facilities of Central Indiana Gas Company and since, as stated by Panhandle Eastern Pipeline Company in its notice of cancellation, it intends to continue service for these industrial consumers, we do not see that there is any alternative for Central Indiana Gas Company but to disapprove and oppose vigorously the proposed cancellation. It is clear that the present and future public convenience and necessity will not permit such

proposed abandonment. Further, it is noteworthy that the underlying purpose of such proposed abandonment is to try to effect a technical or paper rearrangement of this sale to Central Indiana Gas Company for resale to industrial consumers, so that it will have the appearance of a direct sale and hence be at rates not subject to the jurisdiction of the Federal Power Commission."

25. The following is a copy of letter from Panhandle to the Federal Power Commission, withdrawing its notice of cancellation dated May 18, 1943, as amended and extended:

"September 1, 1943

Federal Power Commission  
Washington, D. C.

Attention: Leon M. Fuquay, Secretary  
Re: Docket No. G-495

Dears Sirs:

This letter is with reference to the letter of Central Indiana Gas Company to you, dated August 9, 1943, protesting our notice of cancellation, dated May 18, 1943, of contracts with Central Indiana Gas Company for its gas requirements for resale to fourteen of its industrial customers.

We have not concluded negotiations with certain other war industries, not presently served by us, which would require volumes of gas equal to those volumes required by Central Indiana Gas Company to serve said fourteen industrial customers. Moreover, because of the shortage and the conservation of critical [fol. 117] materials, we are unable at this time to obtain the necessary facilities to render direct service to any of the industries named in our notice of cancellation.

Without altering our policy to any extent whatsoever with respect to this matter, but for the reasons above stated, we hereby withdraw said notice of cancellation, dated May 18, 1943, as amended and extended by our letters to Federal Power Commission, dated June 14, 1943 and July 23, 1943, without prejudice to

our right of again filing a similar notice of cancellation, which we intend to do, at such time as it may appear to us to be desirable.

Very truly yours, — — —, President.

cc: Central Indiana Gas Company"

26. The following is a copy of letter from Central Gas to Federal Power Commission, dated October 22, 1943, withdrawing its protest to the proposed notice of cancellation:

October 22, 1943.

Federal Power Commission  
Washington, D. C.

Attention: Office of the Secretary

DEAR SIRs:

We have received, presumably from Panhandle Eastern Pipeline Company, an unsigned copy of letter dated September 1, 1943 addressed to the Federal Power Commission and referring to Docket No. G495.

That letter withdraws the notice of cancellation by Panhandle Eastern Pipeline Company to the Federal Power Commission, dated May 18, 1943, as amended and extended, relating to certain rate schedules therein described for natural gas service to Central Indiana Gas Company for resale to industrial consumers. Since our letter to you dated August 9, 1943 disapproving and opposing the proposed cancellation was in the nature of a protest responsive to the notice of cancellation, we should like to advise that in view of the withdrawal of that notice of cancellation, the Commission may consider that the purpose of our protest has been effectuated. Accordingly, we are pleased to have the Commission consider our protest as withdrawn. Since there appears a statement in the letter of withdrawal by Panhandle Eastern Pipeline Company that they intend at some future time to file again a similar notice of cancellation, our withdrawal is necessarily without prejudice to our rights of filing again a protest or taking any other action which may be necessary or desirable to assure compliance by Panhandle East-

ern Pipeline Company with the requirements of the Natural Gas Act.

Very truly yours, Central Indiana Gas Company, By Guy T. Henry, President."

[fol. 118] 27. Attached hereto as "Exhibit N" and hereby made a part hereof is a copy of a letter from Central Gas to the Federal Power Commission, dated May 13, 1944, filed in said commission's Docket No. G-405, withdrawing, without prejudice, said petition, affirming therein the allegations contained in said petition.

Dated this 28th day of March, 1945.

(Signed) William F. Dudine, Public Counselor, Alan W. Boyd, George N. Beamer, Attorneys for Respondent, Panhandle Eastern Pipe Line Company. Van Atta, Batton & Harker, Attorneys for Intervenor, Central Indiana Gas Company. William A. McClellen, Attorney for intervenor, Greenfield Gas Company, Inc. John E. Fell, Attorney for Intervenor, Kokomo Gas and Fuel Company. Lawyer & Anderson, Attorneys for Intervenor, Northern Indiana Public Service Company. Evans & Hebel, Edmond W. Hebel, Attorneys for Intervenor, Public Service Company of Indiana, Inc. ———, Attorneys for Intervenor, Southern Indiana Gas and Electric Company.

[fol. 119]

STATE OF INDIANA

PUBLIC SERVICE COMMISSION OF INDIANA

Cause No. 16741

In the Matter of the Investigation by the Commission in Respect of the Distribution by Panhandle Eastern Pipe Line Company, as a Public Utility, of Natural Gas to Consumers Within the State of Indiana.

#### SUPPLEMENTAL STIPULATION OF FACTS

1. It is agreed by and between the parties to this Supplemental Stipulation of Facts that the same shall be in all

respects subject to the limitations set forth in Subdivisions I, II and IV of the Stipulation of Facts heretofore filed in this proceeding.

2. On the 5th day of June, 1945, the Federal Power Commission entered an order in the proceeding described in paragraph 12 of Subdivision VI of said Stipulation of Facts as Docket G 607, a copy of which order is attached hereto and made a part hereof as Exhibit Q-1.

3. Thereafter, on the 29th day of June, 1945, Panhandle Eastern Pipe Line Company, Inc., filed in said proceeding its petition for modification of said order, a copy of which petition is attached hereto and made a part hereof as Exhibit Q-2.

4. Thereafter, Greenfield Natural Gas, Inc., and Eastern Indiana Public Service Company filed written answers in [fol. 120] said proceeding, agreeing to modification as prayed by Panhandle Eastern Pipe Line Company, Inc.

5. On the 6th day of July, 1945, the Public Service Commission of Indiana filed in said proceeding an answer, a copy of which is attached hereto and made a part hereof as Exhibit Q13.

6. Thereafter, on the 10th day of July, 1945, said Federal Power Commission entered an order modifying said order of June 5th, 1945, a copy of which is attached hereto and made a part hereof as Exhibit Q-4.

7. Since the modification of said order Panhandle Eastern Pipe Line Company, Inc., has caused to be constructed the facilities authorized in said order as modified. Up to the date of the filing of this stipulation Panhandle Eastern Pipe Line Company, Inc., has not sold or delivered gas to E. I. DuPont DeNemours & Company under the contract, a copy of which contract is attached to the Stipulation of Facts heretofore filed as Exhibit J-1, for the reason that the purchaser is not yet ready for the delivery of said gas, although the construction of all Panhandle Eastern Pipe Line Company, Inc., facilities therefor has been completed. A photostatic copy of an instrument entitled, "Evidence of Issue of Certificate of Public Convenience and Necessity" by the Federal Power Commission to Panhandle Eastern

Pipe Line Company is attached hereto and made a part hereof as Exhibit Q-5.

Dated, this 3rd day of October, 1945.

— — Public Counsellor. Barnes, ~~Hidson~~,  
Pantzer & Boyd, George N. Beamer, Attorneys  
for Respondent, Panhandle Eastern Pipe Line  
[fol. 121] Company, Inc. — — —, Attorneys for  
Intervenor, Central Indiana Gas Company. — —  
— —, Attorney for Intervenor, Greenfield Gas  
Company, Inc. — — —, Attorney for Intervenor,  
Kokomo Gas and Fuel Company. — — —, At-  
torneys for Intervenor, Northern Indiana Public  
Service Company. — — —, Attorneys for Inter-  
venor, Public Service Company of Indiana, Inc.  
— — —, Attorneys for Intervenor, Southern In-  
diana Gas and Electric Company.

[fol. 122] EXHIBIT Q-1 TO STIPULATION OF FACTS

UNITED STATES OF AMERICA

Federal Power Commission

Before Commissioners: Basil Manly; Chairman; Claude L.  
Draper, Leland Olds, John W. Scott and Nelson Lee  
Smith

June 5, 1945.

Docket No. G-587. Docket No. G-607. Docket No. G-608

In the Matters of

GREENFIELD GAS COMPANY, INC., and GREENFIELD GAS  
COMPANY, INC.

v.

PANHANDLE EASTERN PIPE LINE COMPANY

PANHANDLE EASTERN PIPE LINE COMPANY

EASTERN INDIANA GAS COMPANY

ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND  
NECESSITY

Greenfield Gas Company, Inc. (Greenfield), Panhandle  
Eastern Pipe Line Company (Panhandle Eastern), and  
Eastern Indiana Gas Company (Eastern Indiana) have

filed separate applications in the above-entitled matters, each requesting a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act, as amended, for authority to construct and operate substantially the same facilities, consisting of a 3-inch diameter pipe line extending from a point of connection with Panhandle Eastern's 4-inch Greenfield lateral transmission line to the town of Fortville, Indiana. Eastern Indiana also proposes to construct a 2-inch pipe line from such 3-inch line to serve the town of Ingalls, Indiana.<sup>1</sup> At the hearing in these matters both Greenfield and Eastern Indiana requested permission to withdraw their applications to construct and operate the proposed 3-inch line in favor of Panhandle Eastern's construction of such line provided the latter's application was granted by the Commission. [fol. 123] It appears to the Commission that:

(a) Pursuant to order of December 11, 1944, and after appropriate notice thereof, a public hearing on Greenfield's application in Docket No. G-587 was held in Indianapolis, Indiana, commencing December 21, and recessed on December 22, 1944, subject to further

<sup>1</sup> In its application filed October 18, 1944 (Docket No. G-587), Greenfield proposes to construct 5 miles of 3-inch pipe line extending from a point of connection on Panhandle Eastern's existing 4-inch pipe line serving Greenfield, Indiana, in a westerly direction to Fortville. Greenfield further requests an order directing Panhandle Eastern to interconnect its 4-inch line with Greenfield's proposed 3-inch line and to sell and deliver natural gas to Greenfield at such proposed interconnection. Panhandle Eastern's application filed December 18, 1944 (Docket No. G-607), seeks authority to construct 3.7 miles of 3-inch pipe line in Hancock County, Indiana, from a point on its aforesaid 4-inch pipe line in Sec. 7, T. 17 N., R. 7 E. to the corporate limits of Fortville at a point in Sec. 10, T. 17 N., R. 6 E., together with metering and regulating facilities. Eastern Indiana proposes in its application filed December 19, 1944 (Docket No. G-608), to construct 3.7 miles of 3-inch pipe line to connect Panhandle Eastern's 4-inch pipe line with its facilities in Fortville, together with one mile of 2-inch pipe line extending in a northerly direction from the proposed 3-inch pipe line to the town of Ingalls, Indiana.

order of the Commission. At such hearing Panhandle Eastern and Eastern Indiana both requested that Greenfield's application be dismissed or, in the alternative, that the proceedings thereon be abated pending consideration of their applications to construct similar facilities. Pursuant to order of January 2, 1945, the proceedings on the applications of Panhandle Eastern (Docket No. G-607) and Eastern Indiana (Docket No. G-608) were consolidated with the proceedings on Greenfield's application for purposes of hearing, which was held in Washington, D. C., on February 26, 1945. The Public Service Commission of Indiana and the Public Counsellor of Indiana participated in all hearings in these matters.

(b) Over a long period of years the communities of Fortville, McCordsville and Ingalls, Indiana, were supplied with natural gas from local wells. Such wells have become so depleted as to be no longer able to meet the demands of those communities. The town of Ingalls is now without any gas supply, and the supply in Fortville and McCordsville is inadequate. The Vernon Natural Gas and Oil Company formerly supplied a part of the market in Fortville, but its wells became depleted, and, on August 18, 1944, the Public Service Commission of Indiana authorized the acquisition of that company's facilities by Greenfield, reciting in its order the failure of the local gas supply, the complaints resulting therefrom, and the assurance of Greenfield to bring in a dependable gas supply by connecting the Fortville distribution system with Panhandle Eastern's aforesaid 4-inch pipe line. Greenfield now serves approximately 222 consumers in Fortville through such facilities. Eastern Indiana also serves approximately 268 consumers in Fortville. Many other customers in that city have discontinued service because of the inadequacy of supply. Eastern Indiana also supplies 44 customers in McCordsville. On December 4, 1944, Arthur B. Ayres, the president and principal stockholder in Eastern Indiana, acquired the distribution system in Ingalls, which system will be made available [fol. 124] to Eastern Indiana, and service will be resumed to approximately 50 consumers upon the completion of the facilities hereinafter authorized. Serv-

ice by Greenfield and Eastern Indiana is rendered in accordance with rate schedules approved by, and on file with, the Public Service Commission of Indiana.

(c) The Public Service Commission of Indiana, recognizing the need for additional gas supplies in this area, on August 10, 1943, ordered Eastern Indiana to obtain such supplies "from the nearest interstate pipe line company, or any other available practicable source."

(d) Greenfield presently obtains natural gas for its customers in Fortville through a 2-inch transmission pipe line connecting its facilities serving that town with Panhandle Eastern's 4-inch pipe line to Greenfield. Such 2-inch line is in poor condition and is inadequate to supply the requirements of all consumers in Fortville. After the proposed 3-inch line is placed in operation by Panhandle Eastern's 4-inch Greenfield line and will be used as a low-pressure distribution line to serve rural customers adjacent to it.

(e) The Public Service Commission of Indiana takes the position that a new line to Fortville and Ingalls is required for the rendition of adequate gas service to such communities. Because of the depleted local supplies, Panhandle Eastern affords the nearest and most dependable source of supply for these communities. Panhandle Eastern, moreover, is better able than the other applicants to construct and maintain the proposed 3-inch pipe line by reason of its strong financial condition and maintenance organization. Neither Greenfield nor Eastern Indiana has available funds necessary for the construction of the proposed 3-inch line, and both would have to obtain loans for such construction. Panhandle Eastern, on the other hand, has adequate cash on hand to finance the work. Furthermore, Greenfield and Eastern Indiana prefer that the proposed 3-inch line should be built by Panhandle Eastern. Eastern Indiana is able to finance and construct the proposed 2-inch line to Ingalls.

(f) Panhandle Eastern has entered into a contract for the sale of Eastern Indiana's gas requirements in Fortville, Ingalls and McCordsville and has stipulated on the record that it will supply Greenfield with suf-

ficient volumes of gas to meet the requirements of the latter's customers in and adjacent to Fortville. The War Production Board has issued to Panhandle Eastern such authorization as is required to render the proposed service to Greenfield and Eastern Indiana.

[fol. 125] (g) Panhandle Eastern's reserves of natural gas in the Texas Panhandle field and in the Hugoton field located in Texas, Oklahoma, and Kansas are adequate to permit the proposed deliveries through the proposed 3-inch line to Greenfield and Eastern Indiana, which line will become an integral part of Panhandle Eastern's interstate transmission pipe-line system.

(h) Panhandle Eastern has also entered into a contract for the sale of natural gas to the chemical plant of E. I. du Pont de Nemours & Company located at Fortville. However, the War Production Board has not approved such deliveries of gas, and, inasmuch as the commencement of this service is indefinite, no action should be taken with respect thereto at this time.

The Commission, having considered the applications and the record thereon with respect to the matters involved and the issues presented, *finds* that:

(1) Panhandle Eastern, a Delaware corporation having its principal place of business in Kansas City, Missouri, is engaged in the transportation and sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial and other uses and is, therefore (as heretofore found by the Commission in its Opinion No. 80 and order entered on September 23, 1942, in Docket Nos. G-200 and G-207), a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The 3-inch pipe line proposed to be constructed by Panhandle Eastern will be operated as an integral part of its interstate transmission pipe-line system and used for the transportation and sale of natural gas, subject to the jurisdiction of the Commission. The 2-inch pipe line to be constructed by Eastern Indiana will be used for the transportation of natural gas, subject to the jurisdiction of the Commission. Therefore, the proposed construction and operation of each of

such lines are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act, as amended.

(3) Upon completion of the proposed facilities Eastern Indiana proposes to engage in the transportation of natural gas subject to the jurisdiction of this Commission, and it, therefore, will be a "natural-gas company" within the meaning of the Natural Gas Act.

(4) Panhandle Eastern and Eastern Indiana are able and willing properly to do the acts, and perform the service proposed and to conform to the provisions of the Natural Gas Act, as amended and the requirements, rules, and regulations of the Commission thereunder.

[fol. 126] (5) The proposed construction and operation are and will be required by the present and future public convenience and necessity, and certificates authorizing such proposed construction and operation should be issued, as hereinafter ordered and conditioned.

(6) It will be consistent with the public interest to permit Greenfield to withdraw its application in Docket No. G-587 and Eastern Indiana to withdraw its application in Docket No. G-608, in so far as the latter application requests a certificate for authority to construct the proposed 3-inch pipe line to Fortville and to terminate the proceedings thereon as hereinafter ordered.

The Commission *orders* that:

(A) A certificate of public convenience and necessity be and it is hereby issued to Panhandle Eastern in Docket No. G-607 authorizing the construction and operation of the proposed 3-inch pipe line to Fortville, Indiana, together with the appurtenant facilities necessary for rendering service to Greenfield and Eastern Indiana for the transportation and sale of natural gas to such customers, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) A certificate of public convenience and necessity be and it is hereby issued to Eastern Indiana in Docket

No. G-608 authorizing the construction and operation of the proposed 2-inch pipe line, extending from the proposed 3-inch line to be constructed by Panhandle Eastern, to the town of Ingalls, Indiana, for the transportation of natural gas, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(C) Greenfield be and it is hereby permitted to withdraw its application in Docket No. G-587, and Eastern Indiana is hereby permitted to withdraw its application in Docket No. G-608 in so far as the latter application requests a certificate to construct the proposed 3-inch pipe line to Fortville. The proceedings on such applications are hereby terminated.

(D) The certificate granted to Panhandle Eastern is issued upon the express condition that the facilities herein authorized shall not be used for either the transportation or sale of natural gas, subject to the jurisdiction of this Commission, to any new customers except upon specific authorization by this Commission.

(E) Panhandle Eastern and Eastern Indiana shall complete the construction of the facilities herein authorized on or before September 30, 1945, and shall report to the commission in writing, under oath, the [fol. 127] dates of completion and commencement of operation of such facilities.

(F) The certificates herein granted shall not be transferable and are without prejudice to the authority of this Commission or any other regulatory body with respect to rates, contracts, service, accounts, valuation, estimate or determination of cost, or any other matter whatsoever now pending or which may come before this Commission or other regulatory body, and nothing herein shall be construed as an acquiescence, by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

(G) Nothing herein is to be construed as affecting in any manner the determination of the service areas of the Applicants under Section 7(f) of the Natural Gas Act, as amended.

(H) Nothing contained in this order shall be construed as in any manner changing or affecting the Commission's Opinion No. 80 and accompanying order reducing rates, entered September 23, 1942, in Docket Nos. G-200 and G-207 (3 F.P.C. 273, 292), or in any manner relieving Panhandle Eastern from filing new rate schedules reflecting the reduction in rates in conformity therewith.

(I) The certificates herein granted shall be effective as long as Panhandle Eastern and Eastern Indiana continue the operations hereby authorized in accordance with the provisions of the Natural Gas Act, as amended, and any pertinent rules, regulations, or orders heretofore or hereafter issued by the Commission.

(J) Appropriate evidence of the issuance of these certificates shall be furnished to Panhandle Eastern and Eastern Indiana.

By the Commission.

(S) Leon M. Fuquay, Secretary.

[fol. 128] EXHIBIT Q-2 TO STIPULATION OF FACTS.

Docket No. G-587, Docket No. G-607, Docket No. G-608

In the Matters of

GREENFIELD GAS COMPANY, INC., and GREENFIELD GAS  
Co., Inc.,

v.

PANHANDLE EASTERN PIPE LINE COMPANY

PANHANDLE EASTERN PIPE LINE COMPANY

EASTERN INDIANA GAS COMPANY

APPLICATION OF PANHANDLE EASTERN PIPE LINE COMPANY  
FOR MODIFICATION OF ORDER, OR IN THE ALTERNATIVE FOR  
REHEARING

Comes now Panhandle Eastern Pipe Line Company and files its application for modification of the order heretofore entered by the Commission on June 5, 1945, in the above

numbered dockets or, in the alternative, files its application for rehearing herein, and in support thereof respectfully submits:

1. In its application, filed with the Commission on December 18, 1944 (Docket No. G-607), Panhandle Eastern sought authority to construct 3.7 miles of three inch pipe line in Hancock County, Indiana, from a point on its four inch pipe line (known as the "Greenfield Lateral Line") to the corporate limits of Fortville, Indiana, as fully described in said application and in the "Exhibit B" attached thereto. The construction and operation of the said line and appurtenant facilities contemplate natural gas service to Eastern Indiana Gas Company at the said town of Fortville, and also at the towns of Ingalls and McCordsville, Indiana, as well as the supplying of the fuel requirements of the E. I. DuPont de Nemours & Company, which latter company has a plant situated at the outskirts of the said town of Fortville; service is also contemplated to Greenfield Gas Company, Inc., at the said town of Fortville.

[fol. 129] 2. In its said order of June 5, 1945, the Commission granted Panhandle Eastern a Certificate of Public Convenience and Necessity for the construction and operation of the proposed facilities and authorized it to render gas service to the said Eastern Indiana and Greenfield Gas Companies. No action was taken by the Commission, however, in the said order with respect to the delivery of gas to the chemical plant of E. I. DuPont de Nemours & Company, located at Fortville, Indiana. Concerning the said proposed service, the Commission recited in paragraph "(h)" of the said order that:

"However, the War Production Board has not approved such deliveries of gas, and, inasmuch as the commencement of this service is indefinite, no action should be taken with respect thereto at this time."

3. On June 15, 1945, War Production Board addressed a Communication to Panhandle Eastern advising it of the relaxation of certain wartime controls and of "modification in the application of certain provisions of Utilities Order U-7." In said communication, Panhandle Eastern is further advised that, pursuant to the said modification,

it (Panhandle Eastern) is exempted from the restrictions on new deliveries of gas imposed by paragraphs "(d)" and "(e)" of the said Order U-7. A photostatic copy of the said communication, together with a copy of War Production Board's Order U-7, as amended, are hereto attached and marked "Exhibit A" and made a part hereof.

4. Applicant further submits that, as disclosed in the evidence in the public hearing herein, the construction and operation of the aforesaid lateral line by Panhandle Eastern would not be economically feasible, in the absence of the sale and delivery of gas by Panhandle Eastern under the contract entered with the said DuPont Company, which is a part of the record of this proceeding (Exhibit 26). It is further submitted that the aforesaid contract with the DuPont Company provides that deliveries of gas thereunder [fol. 130] by Panhandle Eastern are to commence no later than September 1, 1945.

5. Applicant submits, further, that on June 20, 1945, it received a telegram from the said DuPont Company advising that "Delay in gas supply will hold up peak production of war supplies." A confirmation copy of the said telegram is hereto attached, marked "Exhibit B," and made a part hereof.

Wherefore, Panhandle Eastern respectfully requests that the said order of June 5, 1945, be modified so as to include authorization for the construction and operation of the necessary facilities for the delivery of gas by Panhandle Eastern to the DuPont Company, under the provisions of the aforesaid contract, and submits that, under the provisions of Section 19(a) of the Natural Gas Act, such modification of the said order may be made without further hearing herein. In the alternative, however, and without waiving the request for modification without hearing, Panhandle Eastern requests a rehearing for the purpose of effectuating the said modification.

In view of the limited time provided for in paragraph "(E)" of the said order, for the completion of the construction of the facilities therein authorized, and of the time limit fixed in the said DuPont contract for the beginning of deliveries of gas thereunder, Panhandle Eastern

respectfully requests that this matter be acted upon by the Commission at an early date.

Respectfully submitted, Panhandle Eastern Pipe Line Company, By: (Signed) Hy Byrd, Vice President.

John S. L. Yost, S. H. Riggs, 135 S. La Salle Street, Chicago, Illinois, Counsel for Panhandle Eastern Pipe Line Company.

[fol. 131] STATE OF ILLINOIS,  
County of Cook, ss:

Hy Byrd, being first duly sworn, on oath says that he is Vice President of Panhandle Eastern Pipe Line Company, applicant herein; that he has read the foregoing application and knows the contents thereof and that the same is true of his own knowledge.

(Signed) Hy Byrd.

Sworn to and subscribed to before me by Hy Byrd this 22nd day of June, 1945. (Signed) Ralph Edward McCarthy, Notary Public. My Commission expires February 14, 1948.

[fol. 132] EXHIBIT Q-3 TO STIPULATION OF FACTS

Docket No. G-587. Docket No. G-607. Docket No. G-608

In the Matter of

GREENFIELD GAS COMPANY, INC., and GREENFIELD GAS  
COMPANY, INC.

v.

PANHANDLE EASTERN PIPE LINE COMPANY

PANHANDLE EASTERN PIPE LINE COMPANY

EASTERN INDIANA GAS COMPANY

Answer of Public Service Commission of Indiana, to Application of Panhandle Eastern Pipe Line Company, for Modification of Order, or in the Alternative for Rehearing

Comes now the Public Service Commission of Indiana, intervenor herein, and for answer to the application of

Panhandle Eastern Pipeline Company for modification of the order of the Commission entered on June 5th, 1945, in the above numbered docket, or alternative application for rehearing herein, respectfully represents to the Commission, as follows: to-wit:

1. That the order heretofore entered by the Federal Power Commission in this cause is within the authority granted to it by the Natural Gas Act, but that any modification of said order to permit service or sale of natural gas by said Panhandle Company direct to any consumer within the State of Indiana would be without the express provisions of Section 1(b) of said Natural Gas Act.

2. That it is the position of this Commission that the proposed sale direct to a consumer by said Panhandle Company is entirely intrastate commerce, and that in order so to engage, the Panhandle is required to comply with the laws of this state relative thereto. That there is no evidence nor is there any allegation in said answer that [fol 133] the Panhandle Eastern Pipe Line Company has secured from the Public Service Commission of Indiana, a Necessity Certificate for them to serve the E. I. DuPont DeNemours and Company, as proposed in their application for modification, as required by the laws of the State of Indiana, particularly by Chapter 53, Acts of 1945, Indiana, effective as of February 26, 1945.

3. That said Panhandle Eastern Pipe Line Company has not heretofore had and does not now have a Necessity Certificate, as required by law, from the Public Service Commission of Indiana, and has not heretofore had and does not now have on file with and approved by said Public Service Commission, any schedule of rates, rules or regulations covering sale of natural gas by it to consumers in the State of Indiana, nor have they filed with the Public Service Commission of Indiana, any annual or other reports in respect to the operation within the State of Indiana necessary under the provisions of the Public Service Commission Act and orders of said Commission applicable thereto.

4. That the Public Service Commission of Indiana objects to the modification of said order, as requested by said Panhandle Eastern Pipe Line Company, unless such modification includes a condition that said Panhandle Eastern

Pipe Line Company shall not supply natural gas to the DuPont Company, the proposed consumer in Indiana, until and unless said Panhandle Eastern Pipe Line Company has first applied for and received from the Public Service Commission of Indiana, the Necessity Certificate covering gas utility service direct to a consumer in Indiana, which is required and provided for by the statutes of the State of Indiana now in force and effect.

[fol. 134] Wherefore, the Public Service Commission of Indiana requests that the prayer of the application of Panhandle Eastern Pipe Line Company for modification be denied, and in the event that your honorable commission does not deny the prayer of the applicant, Panhandle Eastern Pipe Line Company, then and in that event the Public Service Commission of Indiana prays that the modification of said order include a condition that said Panhandle Eastern Pipe Line Company shall not supply natural gas to the E. I. DuPont DeNeumours and Company, the proposed consumer in Indiana, direct, until and unless said Panhandle Eastern Pipe Line Company has first applied for and received from the Public Service Commission of Indiana the Necessity Certificate covering gas utility service direct to a consumer in Indiana which is required and provided for by the statutes of the State of Indiana now in force and effect.

Public Service Commission of Indiana by (Sgd.)  
Laurence E. Carlson, Commissioner.

[fol. 135] EXHIBIT Q-4 TO STIPULATION OF FACTS

UNITED STATES OF AMERICA, FEDERAL POWER COMMISSION

Before Commissioners: Basil Manly, Chairman; Claude  
L. Draper, Leland Olds and Nelson Lee Smith

July 10, 1945

Docket No. G-587. Docket No. G-607. Docket No. G-608

In the Matters of

GREENFIELD GAS COMPANY, INC., and GREENFIELD GAS  
COMPANY, INC.

v.

PANHANDLE EASTERN PIPE LINE COMPANY

PANHANDLE EASTERN PIPE LINE COMPANY

EASTERN INDIANA GAS COMPANY

ORDER MODIFYING ORDER ISSUING CERTIFICATES OF PUBLIC  
CONVENIENCE AND NECESSITY

It appears to the Commission that:

(a) By order of June 5, 1945, the Commission issued a certificate of public convenience and necessity to Panhandle Eastern Pipe Line Company (Panhandle Eastern) in Docket No: G-607 authorizing the construction and operation of 3.7 miles of 3-inch diameter pipeline extending from Panhandle Eastern 4-inch Greenfield lateral transmission line in a westerly direction to the town of Fortville, Indiana, for the transportation and sale of natural gas to Greenfield Gas Company, Inc. (Greenfield) and Eastern Indiana Gas Company (Eastern Indiana) for resale in the Fortville area.

(b) In its original application filed December 18, 1944, and at the hearing in these matters, Panhandle Eastern stated that, in addition to supplying natural gas to Greenfield and Eastern Indiana, it also proposed to use the new facilities for the transportation and sale of natural gas to E. I. du Pont de Nemours (du Pont) for the latter's fuel requirements at its chemical

plant on the outskirts of Fortville. Evidence with respect to such sale was adduced at the hearing on the original applications in these matters.

(c) As stated in paragraph (h) of the June 5, 1945 order, the War Production Board had not then approved the proposed direct sale of gas to the du Pont plant, and inasmuch as the commencement of such proposed service was indefinite, the Commission took no action with respect thereto at that time.

[fol. 136] (d) On June 29, 1945, Panhandle Eastern filed an application for modification of the order of June 5, 1945, to authorize the proposed sale of natural gas to the du Pont plant at Fortville. Such application states that the War Production Board's restrictions on such sale have been removed; that du Pont requires the gas for the production of war supplies; and that the proposed pipeline will not be economically feasible unless the sale to the du Pont plant is made. By instruments dated June 27, 1945, and June 28, 1945, Greenfield and Eastern Indiana, respectively, consented to a request for the modification of the Commission's order of June 5, 1945.

(e) On July 7, and 9, 1945, the Public Counsellor of Indiana, and the Public Service Commission of Indiana, respectfully, filed answers to Panhandle Eastern's requested modification, stating that Panhandle Eastern has not obtained a "necessity certificate" from the Public Service Commission of Indiana authorizing the proposed sale of natural gas to du Pont. The Public Service Commission of Indiana alleged, additionally, that this Commission's June 5, 1945, order was a valid exercise of authority under the Natural Gas Act but that "any modification of said order to permit service or sale of natural gas by said Panhandle Company direct to any consumer within the State of Indiana would be without the express provisions of Section 1(b) of said Natural Gas Act." It is further contended by the Indiana Commission that such proposed sale of gas "is entirely intrastate commerce, and that in order so to engage, the Panhandle is required to comply with the laws of this State rel-

ative thereto." Both answers request that Panhandle Eastern's requested modification be denied or, in the alternative, that such modification not be granted until Panhandle Eastern first obtains from the Indiana Commission authorization for the proposed sale to du Pont.

The Commission, having considered the aforesaid documents filed by the parties and the record herein with respect to the matters involved and the issues presented, finds that:

(1) The proposed sale of natural gas by Panhandle Eastern to du Pont requires the transportation of natural gas subject to the jurisdiction of the Commission, and such operation and service are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act, as amended.

(2) Panhandle Eastern is able and willing properly to do the acts, and perform the service proposed and to conform to the provisions of the Natural Gas Act, as amended, and the requirements, rules, and regulations of the Commission thereunder.

(3) The proposed transportation and service by Panhandle Eastern to E. I. du Pont de Nemours are and will be required by the present and future public convenience and necessity, and the order of June 5, 1945, issuing a certificate to Panhandle Eastern should be modified to permit such service and operation as hereinafter ordered and conditioned.

The Commission orders that:

(A) The certificate of public convenience and necessity issued by the Commission's order of June 5, 1945, in these matters be and it is hereby modified to authorize Panhandle Eastern's transportation and service of natural gas to du Pont, subject to the jurisdiction of the Commission, as described in the record in this proceeding.

(B) This order is without prejudice to the authority of the Indiana Commission in the exercise of any jurisdiction which it may have over the sale or service proposed to be rendered by Panhandle Eastern to du Pont.

(C) Panhandle Eastern shall report to the Commission promptly in writing, under oath, the date of commencement of deliveries of natural gas to du Pont.

(D) Except as herein modified, the provisions of the Commission's order of June 5, 1945, in these matters, including all conditions, shall remain in full force and effect.

By the Commission.

Leon M. Fuquay, Secretary.

[fols. 138-139] EXHIBIT Q-5 TO STIPULATION OF FACTS

Federal Power Commission

Evidence of Issue of

Certificate of Public Convenience and Necessity

UNITED STATES OF AMERICA,  
District of Columbia, ss:

It is hereby Certified, that the Federal Power Commission has found that Panhandle Eastern Pipe Line Company has duly complied with the applicable provisions of Section 7c of the Natural Gas Act, as amended, and the rules and regulations prescribed by the commission thereunder, and, by Order of the Commission of June 5, 1945, in the matter of Panhandle Eastern Pipe Line Company, Docket No. G-607, has been issued a Certificate of Public Convenience and Necessity authorizing the said Panhandle Eastern Pipe Line Company to construct and operate facilities for the transportation and sale for resale of natural gas in interstate commerce, to the extent and subject to the terms and conditions specified in said order and certificate.

Witness whereof the seal of the Federal Power Commission and the hand of its secretary, at Washington, D. C., this 30th day of August, A. D. 1945.

Leon M. Fuquay, Secretary.

[fol. 140] BEFORE THE PUBLIC SERVICE COMMISSION OF  
INDIANA

Cause No. 16741

In the Matter of the Investigation by the Commission in  
Respect of the Distribution by Panhandle Eastern Pipe  
Line Company, as a Public Utility, of Natural Gas to  
Consumers within the State of Indiana

Order and Opinion. Approved Nov. 21, 1945

COMMISSION ORDER

Appearances:

For the Commission: Frank Coughlin, Urban C. Stover,  
Deputy Attorneys General.

For the Public: Glenn R. Slenker, Public Counsellor; Robert E. Jones, William F. Dudine, Assistant Public Counsellors.

[fol. 141] For Respondent, Panhandle Eastern Pipe Line Company: John S. Yost, Crumpacker, May, Carlisle & Beamer, by George N. Beamer; Barnes, Hickam, Pantzer & Boyd, by Kurt F. Pantzer, Allen W. Boyd.

For Intervenor, Central Indiana Gas Company: George B. Pidot, VanAtta, Batton & Harker, by Robert R. Batton.

For Intervenor, Greenfield Gas Company, Inc.: William A. McClellan.

For Intervenor, Kokomo Gas & Fuel Company: John E. Fell.

For Intervenor, Northern Indiana Public Service Company: Lawyer & Anderson, by John S. Lawyer, R. Stanley Anderson.

For Intervenor, Public Service Company of Indiana, Inc.: Evans & Hebel, by William P. Evans, Edmond W. Hebel.

For Intervenor, Southern Indiana Gas & Electric Company: Ortmeier, Bamberger & Ortmeier, by Edmund F. Ortmeier.

By the Commission

CANNON, Commissioner:

On October 13, 1944, the following order in this cause No. 16741 was issued by this Commission, to-wit:

[fol. 142] "Public Service Commission of Indiana, having summarily upon its own motion investigated

the matter of the operations of Panhandle Eastern Pipe Line Company in distributing natural gas as a public utility within the State of Indiana, has reason to believe that said Panhandle Eastern Pipe Line Company has heretofore, without the approval of this Commission, purported to take over and acquire certain property and franchise rights used and useful in rendering public utility natural gas service to consumers within the State of Indiana, that said Panhandle Eastern Pipe Line Company has heretofore and is now engaged, as a public utility, in the retail sale of natural gas within the State of Indiana, that said Panhandle Eastern Pipe Line Company has not heretofore had and does not now have on file with and approved by this Commission any schedule of rates, rules and regulations covering sales of natural gas by it to consumers in the State of Indiana, that said Panhandle Eastern Pipe Line Company has not filed with this Commission any annual or other reports in respect of its operations within the State of Indiana, and that said Panhandle Eastern Pipe Line Company may in various respects be violating provisions of the Public Service Commission Act and orders of this Commission applicable to it and its operations.

And it appearing to this Commission from its said investigation that sufficient grounds exist to warrant a formal hearing being ordered as to the matters heretofore investigated, this commission hereby furnishes to said Panhandle Eastern Pipe Line Company, pursuant [fol. 143] to the requirements of Section 62 of the Public Service Commission Act, this statement notifying said Panhandle Eastern Pipe Line Company of the matters under investigation, which are as follows, to-wit:

1. The facts and circumstances under which said Panhandle Eastern Pipe Line Company has purported to acquire and hold any property, or franchise or other rights, used or useful in or in connection with sales of natural gas to the Anchor-Hocking Glass Corporation, a consumer of natural gas within the State of Indiana, or to any other consumer or consumers of natural gas within the State of Indiana.

2. The nature, period and extent of natural gas service by said Panhandle Eastern Pipe Line Company to said Anchor-Hocking Glass Corporation, or any other consumer of natural gas within the State of Indiana, and the right, if any, of said Panhandle Eastern Pipe Line Company to render any such service.

3. The matter of the failure of said Panhandle Eastern Pipe Line Company to file with this Commission any tariffs, rules and regulations appertaining to natural gas service to such consumer or consumers as it serves within the State of Indiana.

4. The matter of the failure of said Panhandle Eastern Pipe Line Company to file with this Commission an annual report for the calendar year 1942 and the calendar year 1943, or either of them.

5. The matter of the failure of said Panhandle Eastern Pipe Line Company to file with this Commission an original cost report appertaining to its property [fol. 144] used and useful in rendering natural gas service to consumers within the State of Indiana.

6. Whether or not said Panhandle Eastern Pipe Line Company is a corporation organized under the laws of the State of Indiana.

7. Whether or not said Panhandle Eastern Pipe Line Company now has, and has had at all times while it has been selling natural gas, to consumers within the State of Indiana, an office in the State of Indiana, and has kept thereat all books, accounts, papers and records required by this Commission to be kept within the State of Indiana.

8. Whether or not said Panhandle Eastern Pipe Line Company has failed to keep any book, account, paper or record required to be kept by it under the orders of this Commission or has failed to comply with any direction of this Commission relating to any such book, account, paper or record.

9. Whether or not said Panhandle Eastern Pipe Line Company in any other respect is failing or has failed to comply with, abide by and conform with any applicable provisions of the Public Service Commis-

sion Act or of the orders and regulations of this Commission.

Dated at Indianapolis, Indiana, this 13th day of October, 1944.

By order of the Public Service Commission of Indiana.

Hugh W. Abbett (S.), Chairman. (Seal.)

Attest: Glen L. Steckley (S.), Secretary."

[fol. 145] Abbett, Cannon and Barnard Concur:

( Approved: October 13, 1944

Due notice was given that this cause would be heard in the rooms of the commission, 401 State House, Indianapolis, Indiana, on November 20, 1944, at 2:00 P. M. Said notice was approved October 30, 1944 and is as follows:

"Whereas the Public Service Commission of Indiana, by its order made in the above entitled cause on October 13, 1944, determined that sufficient grounds existed to warrant a formal hearing being ordered as to matters under investigation by the Commission, as set out and contained in said order of October 13, 1944, and whereas a certified copy of said order of October 13, 1944, containing a statement of the matters under investigation was sent to the Panhandle Eastern Pipe Line Company by registered mail on October 14, 1944.

Now, therefore, the Commission sets this cause for public hearing upon the matters set out in said order of October 13, 1944, and all matters pertinent thereto, to be held at the Rooms of the Commission, 401 State House, Indianapolis, Indiana, on November 20, 1944, at 2:00 P. M.

It is further ordered that said Panhandle Eastern pipe Line Company shall appear at such hearing and shall produce testimony and evidence, consisting of its books, records, contracts and documents pertaining to the matters under investigation as set out in said order of October 13, 1944, and that at such [fol. 146] hearing opportunity will be afforded said Panhandle Eastern Pipe Line Company to produce any evidence it may offer pertaining to said matters under investigation.

The Secretary of this Commission is hereby ordered and directed to forward to said Panhandle Eastern Pipe Line Company, by registered mail, a certified copy of this order. Dated at Indianapolis, Indiana, this 30th day of October, 1944.

By order of the Public Service Commission of Indiana."

Abbett, Cannon and Barnard Concur:

Approved: October 30, 1944

Said notice was duly printed and published in the Winchester News, a newspaper of general circulation printed in the English language and published in the City of Winchester (Randolph County, Indiana, on November 1, 1944; also in The Indianapolis Times, a newspaper of general circulation printed and published in the English language in the City of Indianapolis, Marion County, Indiana, on November 1, 1944; also in the Hoosier Sentinel, a newspaper of general circulation printed and published in the English language in Indianapolis, Marion County, Indiana, on November 3, 1944, and also in the Times Gazette, a newspaper of general circulation printed and published in the English language in the City of Union City, Randolph County, Indiana, on November 9, 1944.

Said notice was duly received by the respondent Panhandle Eastern Pipe Line Company (Panhandle).

[fol. 147] In response to the notice dated October 30, 1944, Panhandle alleged that "any action or order of the Public Service Commission of Indiana herein purporting to regulate, interfere with, or otherwise affect the sale and delivery by Panhandle Eastern Pipe Line Company to Anchor-Hocking Glass Company of natural gas transported by Panhandle in interstate commerce would unduly and unlawfully burden interstate commerce in violation of Article 1, Section 8 (3) of the Constitution of the United States, and that if sections 54-112 et seq. Burns Indiana Statutes Annotated, 1933, or any other Indiana statute, is construed to purport to authorize said commission to regulate, interfere with or otherwise affect such sale and delivery, such statutes as so construed are unconstitutional and void because in violation of Article 1, Section 8 (3) of the Constitution of the United States, and denies:

- (a) that it sells natural gas in Indiana except as a part of interstate commerce;

(b) that it is engaged in intrastate commerce in the State of Indiana;

(c) that it has transacted or is transacting within the State of Indiana any business as a public utility within said state;

(d) that the sale and delivery of natural gas transported by it in interstate commerce directly to an industrial consumer is subject to the jurisdiction of the Public Service Commission of Indiana;

[fol. 148] (e) that it is in any manner subject to the jurisdiction of said commission;

(f) that said commission has any right, power or authority to institute this proceeding against it;

(g) that the statutory provisions under which this action is instituted (Secs. 54-412, et seq. Burns Indiana Statutes Annotated, 1933) authorizing investigation by said commission of matters relating to any public utility, have any application to it or its business;

(h) that it is under any obligation to comply with any Indiana statute or any order of said commission relating to public utilities within the State of Indiana; and.

(i) that its business or any part thereof is subject to regulation of any character by said commission."

On or prior to November 20, 1944, Central Indiana Gas Company (Central Gas), Greenfield Gas Company, Inc. (Greenfield Gas), Kokomo Gas & Fuel Company (Kokomo Company), Northern Indiana Public Service Company (Northern Company), Public Service Company of Indiana, Inc. (Service Company) and Southern Indiana Gas & Electric Company (Southern Indiana), each of which was a public utility engaged in supplying natural gas to consumers within the State of Indiana, filed with the Commission respective applications for leave to intervene and be heard in this cause. At the hearing on November 20, [fol. 149] 1944, the Commission considered said applications and granted each of said applicants leave to intervene and be heard herein.

At said hearing, all appearances were entered as above stated except that Mr. Frank Coughlin, Mr. Urban C.

Stover, Mr. Glenn R. Slenker, Mr. Robert E. Jones, Mr. George B. Pidot, Mr. Kurt Pantzer, Mr. R. Stanley Anderson and Mr. William P. Evans entered their respective appearances for their respective clients at later hearings of this cause.

At the hearing on November 20, 1944, it was, with the approval of the Commission, agreed between the Public Counsellor, counsel for Panhandle and the respective counsel for the intervenors that the parties to the proceedings would endeavor to agree upon, and would file in this cause, a Stipulation of Facts; that any stipulated facts would be subject to objection as to relevancy and materiality by any party thereto if such objection was made within such time as the Commission should fix; and that the stipulated facts could be supplemented and other facts could be shown by oral testimony taken and exhibits offered at a hearing.

The hearing was then continued to December 4, 1944, to permit time for the working out of the proposed Stipulation of Facts. By subsequent orders of the Commission the date of further hearing was further continued from time to time to January 9, 1945, at which date a Stipulation of Facts (Stipulated Facts), dated January 9, 1945, signed by the Public Counsellor, counsel for Panhandle [fol. 150] and counsel for all the respective intervenors was introduced and received in evidence. At such hearing, counsel for Panhandle, filed objections to the relevancy and materiality of certain parts of the evidence contained in the Stipulated Facts; and the Public Counsellor and counsel for the intervenors all advised the Commission that they raised no objections to the reception and consideration by the Commission of any of the Stipulated Facts. At said hearing the parties in this cause also advised the Commission that they had been unable to agree upon a stipulation in respect of certain matters, and requested the Commission to fix a time for the taking of oral evidence and the production of exhibits in respect of such matters or of matters supplementary to the Stipulated Facts which any of the parties might desire to offer. The Commission fixed February 6, 1945, as the date for such further hearing. Subsequently by orders of the Commission the date for such hearing was, for cause shown, continued from time to time until March 28, 1945, at which time a Stipulation of Evidence, including exhibits thereto, were offered by all the parties hereto, and oral testimony and exhibits were offered

by the Public Counsellor and by certain of the intervenors. Most of such proffered evidence was received by the Commission, subject to its later ruling upon objections by counsel for Panhandle to the relevancy and materiality of certain parts thereof.

The evidence offered in this cause consists of the following:

[fol. 151] A. The Stipulated Facts, including the exhibits attached thereto as a part thereof.

B. A Stipulation of Evidence, dated March 28, 1945, including the exhibits attached thereto as a part thereof.

C. Oral testimony presented at the hearing on March 28, 1945, by William F. Lebo, then the Acting Chief Engineer of the Commission and now its Chief Engineer, who was called as a witness by the Public Counsellor, and by L. B. Schiesz, First Vice-president of Service Company, by Guy T. Henry, President of Central Gas, and by Edward M. Hahn, President and General Manager of Kokomo Company, who were called as witnesses by the respective respondents with which they are connected.

D. The record of the testimony of Oscar W. Morton, Rate Engineer of Panhandle, before the Federal Power Commission on February 26, 1945.

E. Supplemental Stipulation of Facts, dated October 3, 1945, including the exhibits attached thereto as a part thereof.

F. The following exhibits (in addition to the exhibits attached to and identified in the Stipulated Facts, the Stipulation of Evidence and the Supplemental Stipulation of Facts):

Commission:

No. 1—Proof of publication of notice of hearing in the Gazette, Winchester, Indiana.

[fol. 152] No. 2—Proof of publication of notice of hearing in the The Indianapolis Times, Indianapolis, Indiana.

No. 3—Proof of publication of notice of hearing in the Hoosier Sentinel, Indianapolis, Indiana.

No. 4—Proof of publication of notice of hearing in the Times Gazette, Union City, Indiana.

No. 5—Notice of investigation in this cause, issued by the Commission on October 13, 1944.

No. 6—Order issued by the Commission in this matter on October 30, 1944, setting this matter for hearing.

**Public Counsellor:**

No. 1—Analysis of sales of gas to ultimate consumers in Indiana and statement of gas property and plant investment, etc.

No. 2—Copy of resolution as adopted by Board of Directors of Panhandle on March 19, 1945.

**Service Company:**

No. 1—Map showing gas facilities of Service Company.

No. 2—Statement showing gas utility statistics of Service Company.

No. 3—Statement showing gas utility net operating income and pro forma operating income of Service Company.

**[fol. 153] Central Indiana:**

No. 1—Statement showing gas utility net operating income and pro forma operating income of Central Indiana.

**Kokomo Company:**

No. 1—Statement showing gas utility statistics of Kokomo Company.

No. 2—Statement showing gas utility net operating income and pro forma operating income of Kokomo Company.

It was agreed between the Commission and the parties to this cause, that the objections to the relevancy or mate-

riality of the evidence, which were made by any party hereto and were not acted on by the Commission at the time made, should be argued in briefs to be filed, and in oral argument; and should thereafter be ruled upon by the Commission.

Following the hearing on March 28, 1945, briefs and reply briefs were filed by the Public Counsellor, intervenors and Panhandle. On October 3, 1945, this Commission heard oral arguments in this cause, at which time additional briefs were presented by Central Gas and by Panhandle.

The Commission is fully appreciative of the public importance of the issue here under investigation. Because of this fact, it has been anxious throughout these proceedings to afford the interested parties ample opportunity to present fully to the Commission their respective views [fol. 154] upon the matters involved. It has sought, too, such full factual information as would shed light upon any phase of the regulatory problem which the Commission has before it in this investigation. The fundamental issues involved are not narrow ones and the Commission feels that it has a better background for dealing with the public issues here at stake if it has before it the full history of the development of the natural gas utility business in Indiana, of the place of Panhandle and its predecessors in that development, of the activities that Panhandle is carrying on or may be endeavoring to carry on, and of the possible effect of such activities upon the effectiveness of regulation of direct consumer sales in Indiana and upon the interest of the gas consuming public in Indiana. The Commission believes that all of the evidence adduced in this cause directly sheds light upon such matters.

Prior to this investigation, the Commission had never been supplied with information as to the activities of Panhandle within the state. When the supplying of direct consumer gas service was commenced by Panhandle in Indiana it did not file, and has at no time since filed, with the Commission any reports, tariffs or regulations. The evidence in this investigation supplies in part such information as the Commission would normally have from required reports. In an investigation of this kind—an investigation by a regulatory agency on its own motion and for purposes of determining its regulatory duties—no narrow conception of the restriction of factual information

should be adopted. The Commission concludes, therefore, [fol. 155] that all the evidence presented in this cause should be received by it as a part of the record in this cause, and that each and all of the objections of Panhandle to the relevancy or materiality of any evidence offered should be overruled; and it will be so ordered.

### Findings of Facts

The Commission, having heard and considered the evidence presented in this cause and being duly advised in the premises finds that the evidence in this cause establishes facts which are summarized and found as follows:

1. Panhandle, a Delaware corporation, at and prior to sometime in the year 1931, had constructed its main transmission line extending from the Amarillo Gas Field in the Texas Panhandle and the Hugoton Gas Field in southwestern Kansas through the States of Oklahoma, Kansas, Missouri and Illinois, to a point near the Indiana-Illinois state line. In 1932 the eastern end of this line was interconnected near Dana, Indiana, with gas transmission lines built by Indiana Gas Transmission Corporation (Indiana Transmission), a Delaware corporation, extending to Zionsville, Indiana, and to Muncie, Indiana. Near Muncie, said line interconnected with gas transmission lines from Ohio owned and operated by Ohio Fuel Gas Company (Ohio Fuel), an Ohio corporation. Early in 1936, Indiana Transmission was merged into Michigan Gas Transmission Corporation (Michigan Gas), a Delaware corporation, and the line to Zionsville was extended eastward across [fol. 156] Indiana, the northwest corner of Ohio, and Michigan to a point near Detroit, Michigan. Indiana Transmission, Michigan Gas and Ohio Fuel were all subsidiaries of Columbia Gas & Electric Corporation (Columbia Gas), a Delaware corporation, or its affiliates. The relationship of Columbia Gas and its affiliates and Panhandle are set forth in Findings made and an Opinion given by the Securities and Exchange Commission on May 27, 1941, in Files numbered 31-106, 31-107, 31-108, 31-109, 31-422, 31-423 and 31-493 pending before it, which Findings and Opinion are a part of the record in this cause as "Exhibit D" in the Stipulated

Facts. On February 6, 1942 Panhandle acquired from Columbia Gas or subsidiaries all the stock of Michigan Gas and the gas facilities in Indiana of Ohio Fuel. On March 31, 1943, Panhandle liquidated Michigan Gas and acquired directly all its properties. Said line and appurtenant facilities as presently constituted, consist of 22-inch, 24-inch and 26-inch transmission mains, branch lines, dehydration plants, gasoline plant, compressor stations and related facilities incidental to the transmission and delivery of such natural gas. As a result of the completion of Panhandle's 1943 construction program, an additional continuous parallel mains runs from a point near Liberal, Kansas, to a point 68.8 miles northeast of Zionsville, Indiana, and from a point near Edgerton, Indiana, to a point in Ohio 18.2 miles northeast of Edgerton. The details of the development of this gas transmission system, and the operation thereof, is shown by Stipulated Facts and particularly in Section VI, Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 thereof and the supporting exhibits therein referred to and made a part thereof [fol. 157] as "Exhibits A to H-3 both inclusive. The gas fields and the transmission system are shown more fully on the map, which is a part of the Stipulated Facts as "Exhibit C."

2. Said gas transmission line and other facilities were constructed, or acquired, for the purpose of transporting natural gas from the said gas fields in Texas and Kansas to the intervening States, including the State of Indiana, and the Detroit area and selling such gas directly or indirectly to the public; and Panhandle is now engaged, and it, or the related Columbia Gas Subsidiaries, have continuously since such construction and acquisition, been engaged in the business of furnishing such natural gas in the State of Indiana and elsewhere, directly or indirectly, to all types of consumers, residential commercial and industrial. At the present time, Panhandle holds a Certificate of Admission issued to it on September 19, 1935, by the Secretary of State for Indiana, authorizing it to transact business in the State of Indiana as a foreign corporation, which recites that the character

of business, under its Articles of Incorporation, which it is authorized to transact in Indiana, is as follows:

"To engage in the business of transmitting and transporting natural gas, artificial gas, mixtures of natural and artificial gases, oil and any by-product thereof, in, into, through and from the State of Indiana and any other state except the State of Delaware, and of supplying gas and other of said articles so transmitted and transported by it to other corporations, public or private or persons, firms, associations or [fol. 158] other organizations, engaged in the business of supplying gas or other of said articles to the public.

"To lay, construct, purchase, lease or otherwise acquire, hold, own, improve, maintain and operate, pipe lines and mains for the transmission and transportation of gas and said other articles as aforesaid, and to sell, lease or otherwise dispose of the same.

"To produce or purchase or otherwise acquire, store and transmit such gas, and said other articles, and to sell or otherwise dispose of the same to corporations, persons, firms, associations or other organizations as aforesaid.

"To purchase, lease, take, in exchange, or acquire in any other manner now or hereafter authorized by law, hold, possess, improve, construct, develop, deal in and sell, convey, assign or otherwise dispose of any and all property of every kind and description, real, personal or mixed, necessary, convenient or suitable for the purposes of the Corporation, including, without limiting the foregoing, any and all rights of way, easements, interests, franchises, licenses and privileges in the same; provided, however, that the Corporation shall not acquire, own, hold or lease real estate in the State of Indiana except such as may be necessary for the proper carrying on of its legitimate business."

At the end of the above, there appears the following declaration, which the Commission judicially knows was copied from the application for admission made by Panhandle:

[fol. 159] "The business above described being for the purpose of interstate commerce only and not that of a public utility business in Indiana." (See "Exhibit B" attached to the Stipulated Facts.)

3. Panhandle sells and delivers in Indiana the natural gas transported by it (1) to other gas companies, including all of the intervenors except Southern Indiana, which purchasers distribute such gas to residential, commercial and industrial consumers served by them, and (2) to one industrial consumer, Anchor-Hocking Glass Corporation (Anchor-Hocking), served directly by Panhandle.

4. Prior to January 9, 1945 Panhandle filed with the Federal Power Commission its application under the Natural Gas Act for a certificate of convenience and necessity to construct in Indiana, as a part of its "general pipe line system", a 3-inch lateral line extending from one of its main lines to a point near the Town of Fortville, Indiana, and certain facilities, which line and facilities were to be used to transport in inter-state commerce, and to deliver, gas to be sold to two Indiana utilities for resale, and also, if a proposed contract with the E. I. DuPont de Nemours (DuPont) was consummated, to be sold directly to DuPont for consumption at its plant adjacent to said town. Subsequently to the filing of said application, but prior to January 9, 1945, said contract between DuPont and Panhandle was entered into. On June 5, 1945, after hearings, the Federal Power Commission entered its order on said application in which it granted a certificate to Panhandle to construct the proposed line, but specifically prohibited Panhandle from using the line for "either the [fol. 160] transportation or sale of natural gas, subject to the jurisdiction of" the Federal Power Commission, "to any new customers except upon specific authorization" by said commission. Under date of June 29, 1945 Panhandle filed with the Federal Power Commission an application for a modification, without hearing, of the aforesaid provisions of said order so as to permit the use of said line for the transportation of gas to be sold to DuPont, and the construction of certain additional facilities for such delivery and in said application represented that it had received authority from the war production board to supply gas to DuPont and that delay in such gas supply would hold up peak production of war supplies. On July 7, 1945 the Public Counsellor, and on July 9, 1945 this Commission, pro-

tested against the modification of the Order of June 5, 1945 prior to a showing that state laws had been complied with. The Federal Power Commission, on July 10, 1945 and without a hearing, modified its Order of June 5, 1945, so as "to permit such service and operation as" were thereafter in such order of modification "ordered and conditioned." Said order then provided:

"(A) The certificate of public convenience and necessity issued by the Commission's order of June 5, 1945, in these matters be and it is hereby modified to authorize Panhandle Eastern's transportation and service of the natural gas to Du Pont, subject to the jurisdiction of the Commission as described in the record of this proceeding.

"(B) This order is without prejudice to the authority of the Indiana Commission in the exercise [fol. 161] of any jurisdiction which it may have over the sale or service proposed to be rendered by Panhandle Eastern to Du Pont.

"(C) Panhandle Eastern shall report to the Commission promptly in writing, under oath, the date of the commencement of the deliveries of natural gas to Du Pont.

"(D) Except as herein modified, the provisions of the Commission's order of June 5, 1945, in these matters, including all conditions, shall remain in full force and effect."

On August 30, 1945, the Federal Power Commission issued to Panhandle in Docket No. G-607 a certificate of convenience and necessity authorizing it "to construct and operate facilities for the transportation and sale for resale of natural gas in interstate commerce, to the extent and subject to the terms and conditions specified in said order and certificate." Panhandle asserts, as of October 3, 1945, that the facilities were constructed but that DuPont was not yet ready to take gas. So far as the Commission is advised Panhandle has not since said date supplied any gas to DuPont in Indiana. (See Section VI, Paragraph 12 of the Stipulated Facts and "Exhibit J-1" and "Exhibit J-2" filed

therewith, and the Supplemental Stipulation of Facts and all exhibits filed therewith). Panhandle has not yet applied to this Commission for any Necessity Certificate authorizing it to render gas service direct to consumers within the rural area in which the plant of DuPont is located. Panhandle plans to sell all industrial customers within reach of its facilities in Indiana who meet Panhandle's requirements.

5. Panhandle does not directly sell in Indiana any gas to residential and commercial consumers, except that it does supply for a moderate charge gas for residential use to seven of its employees, who live in company owned houses located on Panhandle's property. As part of its obligation under certain right of way agreements in other States and similar arrangements with its own employees, Panhandle, throughout its entire system, is now rendering service to approximately 194 residential customers and the revenue therefrom for the year ended December 31, 1943, amounted to \$12,220.49. During the same year, revenue from direct industrial sales for the entire system amounted to \$1,559,195.24 and revenue from sales to other gas companies for resale amounted to \$22,072,005.40. Current sales are being made in approximately the same proportions.

6. Approximately 950,000 consumers are supplied directly or indirectly with gas from the Panhandle system, including more than 112,000 consumers in Indiana. The number of industrial consumers served directly by Panhandle in the entire system was 21 in 1943, and is 23 at the present time. The names of such consumers, the location of their plants at which natural gas is supplied by Panhandle and the years in which direct service of natural gas by Panhandle to such plants commenced are given in a table, which is shown on page 12 and forms a part of Section VI, Paragraph 13 of the Stipulated Facts.

[fol. 163] 7. For the 12 months period ending September 30, 1944, the amounts in thousands of cubic feet (M. C. F.) of gas purchased by the intervenors from Panhandle and resold by them to industrial consumers

and the revenue derived by the intervenors therefrom were as follows:

Company	M. C. F. Sales	Revenue
Central Gas	9,004,962	\$2,624,557.81
Kokomo Company	480,406	196,241.70
Northern Company	940,340	545,940.00
Service Company	1,978,605	812,631.80

8. Anchor-Hocking is engaged in its plant at Winchester, Indiana, in the manufacture of glassware and the natural gas purchased from Panhandle for use at the Winchester plant of Anchor-Hocking is used in the manufacture of products produced there. (See Section VI, Paragraph 14 of the Stipulated Facts.)

9. Central Gas serves natural gas purchased by it from Panhandle to more than 30 large industrial consumers which is delivered to them by Central Gas and used by them in their manufacturing plants in Indiana. Said industrial consumers include Hart Glass Division of Armstrong Cork Company, Ball Brothers Company, Foster-Forbes Glass Company, Owens-Illinois Glass Company, Slick Glass Corporation, Sneath Glass Company, The Warfield Company, Sterling Glass Division, Delco-Remy Division of General Motors Corporation, Indiana Steel and Wire Company, Johns-Manville Products Corporation, The National Tile Company and Warner Gear Company. (See Section VI, Paragraph 15 of the Stipulated Facts.)

[fol. 164] 10. Service Company serves natural gas purchased by it from Panhandle to 9 large industrial consumers in Indiana, which is used by them in their manufacturing plants in Indiana. Said industrial consumers include Aluminum Company of America, Chrysler Corporation, Ingersoll Steel and Disc Division of Borg-Warner Corporation and Ingram Richardson Company. (See Section VI, Paragraph 16 of the Stipulated Facts.)

11. Kokomo Company serves natural gas purchased by it from Panhandle to 6 large industrial consumers in Indiana, which is used by them in their manufacturing plants there. Said industrial consumers are Continental Steel Corporation, American Radiator and

Standard Sanitary Corporation, Haynes-Stellite Company, Kingston Products Corporation, Chrysler Corporation and Globe Stove and Range Company. (See Section VI, Paragraph 17 of the Stipulated Facts.)

12. Northern Company serves natural gas purchased by it from Panhandle to 72 large industrial consumers in Indiana, which is used by them in their manufacturing plants there. Said industrial consumers include General Electric Company, International Harvester Company, Studebaker Corporation and Phelps-Dodge Corporation. (See Section VI, Paragraph 18 of the Stipulated Facts.)

13. Panhandle, in Indiana, sells natural gas to Kentucky Natural Gas Corporation, which company resells all or the principal part of such natural gas to companies distributing, as public utilities, natural gas to residential, commercial and industrial consumers in [fol. 165] Indiana. Panhandle, in Indiana, also sells natural gas to the following companies or municipal corporations, which are public utilities or municipalities distributing such gas and the number and classification of gas consumers served by such gas from Panhandle are approximately, as follows:

[fol. 166]

Name of Company	Approximate Number of Customers Served:				
	Residential	Commercial	Industrial	Other	Total
Central Gas	31,384	1,322	103	none	32,809
Greenfield Gas	1,296	59	2	4	1,361
Indiana Gas Distribution Corp. (Indiana Gas)					2,070
Indiana-Ohio Public Service Co. (Ind.-Ohio Co.)	3,314	219	11		3,544
Kokomo Company	6,674	379	23		7,076
Lynn Natural Gas Company	265	28			293
Northern Company (Ft. Wayne District)	31,633	1,160	67	68	32,928
Pendleton Natural Gas Co.	617	39			656
Service Company	22,516	1,916	46	120	24,598
Richmond Service Co.					6,800
Town of Lapel					250
Town of Montezuma					100
Town of Pittsboro					116
Town of Roachdale					92
Total	97,699	5,122	252	192	112,699

[fol. 167] (See Section VI, Paragraph 19 of Stipulated Facts.)

14. Deliveries of natural gas by Panhandle directly to industrial customers using large quantities of gas, and to other gas companies for resale to industrial customers using large quantities of gas, are, in most instances, subject to curtailment, interruption or discontinuance in the event of an insufficiency in the supply of gas.

15. The details of the service of natural gas to Anchor-Hocking since 1931, when it first commenced the extensive use of natural gas as a fuel at its plant at Winchester, Indiana, will be found in Section VI, Paragraph 21 of the Stipulated Facts and the supporting Exhibits mentioned therein, being "Exhibit G-6," "Exhibit K," "Exhibit L," and "Exhibit M," "Exhibit N-1," "Exhibit N-2" and "Exhibit N-3." Briefly summarized, from 1931 until May 11, 1942, Anchor-Hocking received this service from Indiana Gas; a public utility under the Indiana Act, which, in turn, purchased the gas from Panhandle or its predecessor, Michigan Gas, and this service was taken over by Panhandle under its contract dated May 11, 1942, copy of which is attached to the Stipulated Facts as "Exhibit N-2."

16. In the service of such natural gas directly to Anchor-Hocking, Panhandle transports the gas through a 6-inch lateral or branch gas transmission line ("Winchester line") extending north from Panhandle's main line a distance of about 7 miles, which Winchester line was constructed early in 1931. The pressure in the said main line, which is a 16-inch line running from a point near Muncie to a point in Ohio near the Indiana-Ohio State Line, is normally carried [fol. 168] at approximately 200 pounds per square inch. At or adjacent to a point where the natural gas is taken into the Winchester line from said 16-inch line, the pressure is reduced by means of a regulator, owned and operated by Panhandle, to approximately 100 pounds per square inch and the gas in the Winchester line is sold by Panhandle (1) to Anchor-Hocking for its own use and (2) to Indiana-Ohio Company for resale to consumers in Winchester, Portland and Union City in Indiana, and Union City, in Ohio, and their environs. Adjacent to the northeast corner of the

corporate limits of Winchester, Indiana, Panhandle has two-meter houses located approximately 400 feet apart, both of which are located on plant property of Anchor-Hocking. In one of these are the regulators and meters used in connection with deliveries to Anchor-Hocking and in the other, regulators and meters used in connection with deliveries to the Indiana-Ohio Company. A branch of the Winchester line runs directly into each of these meter houses and gas enters both at the same pressure, which is normally about 80 pounds per square inch. At the Anchor-Hocking meter house, the gas passes first through a regulator which reduces the pressure to approximately 40 pounds per square inch, then through two orifice meters into a header. From this header a four-inch service line carries the gas to the plant at the metering pressure (40 pounds per square inch). From this header gas also passes into another regulator in the meter house which reduces the gas to a pressure of approximately 10 pounds per square inch. From this regulator the gas at such pressure passes through a ten inch line directly into the glass plant. [fol. 169] Anchor-Hocking takes delivery of all gas at the outlet side of Panhandle's meter house. In 1943, Panhandle sold 1,150,279 M. C. F. of natural gas to Anchor-Hocking and 151,065 M. C. F. of natural gas to Indiana-Ohio Company. The Winchester line is located in part on certain public county highways in Randolph County pursuant to authority granted by the Board of Commissioners of said County to Ohio Fuel Gas Company, which built the line originally before it was acquired by Panhandle on February 6, 1942. (See Section VI, Paragraph 22, 23, 24, 25, 26 and 27 of the Stipulated Facts.)

17. Except as above shown, no franchise authorizing the sale or delivery of natural gas under the contract between Panhandle and Anchor-Hocking dated May 11, 1942, which is attached to the Stipulated Facts as "Exhibit N-1," has been acquired by Panhandle from the State of Indiana or any agency thereof, or is claimed by Panhandle to have been so acquired. (See Section VI, Paragraph 28 of the Stipulated Facts.) Panhandle has not filed with the Public Service Com-

mission of Indiana any tariffs of rates or any rules or regulations relating to the sale of natural gas to Anchor-Hocking; and Panhandle has at no time filed with the Public Service Commission of Indiana any annual report or any other periodic report, nor has it filed any original cost report appertaining to any portion of its property in Indiana. Panhandle has not purported to keep its books, accounts, papers or records in the manner required under the orders and directions of the Public Service Commission of Indiana for public utilities subject to the jurisdiction thereof. [fol. 170] In keeping its books, accounts, papers and records Panhandle is subject to the rules and regulations of the Federal Power Commission, but Panhandle claims that direct sales by it to industrial consumers are not subject to regulation by the Federal Power Commission. (See Section VI, Paragraphs 30, 31, 32, 33, and 34 of the Stipulated Facts.)

18. Each of the intervenors in this Cause has filed with the Public Service Commission of Indiana, sworn annual reports for the years 1942 and 1943, as provided for by the Public Service Commission Act of the State of Indiana.

19. After an exchange of letters between Panhandle and Kokomo Company in June 1943, the preliminary arrangements for such a meeting being made on June 30, 1943, certain representatives of Panhandle and of Kokomo Company had a meeting with Mr. Williams and Mr. Clifford of Continental Steel Corporation, one of the large industrial consumers being served by Kokomo Company with gas being purchased by it from Panhandle. In the course of this conference, Mr. Morton, one of the representatives of Panhandle, reiterated what he had already stated on the day previous to Mr. Hahn of Kokomo Company, namely, that it would be the purpose and intention of Panhandle in the future to make all contracts for supplying gas to large industrial consumers direct with such consumers and that Panhandle hoped to make such arrangements with the Continental Steel Corporation. (See Section 14 of the Stipulation of Evidence.)

20. On the afternoon of June 30, 1943, Messrs. Morton and Ballard, representing Panhandle also, called [fol. 171] on certain representatives of Service Company in connection with the matter of a supply of natural gas for the Ingersoll Steel and Disc Division of the Borg Warner Corporation (Ingersoll Company), a large industrial consumer at New Castle, Indiana, then being supplied by Service Company under an interruptible gas contract with gas obtained from Panhandle. Mr. Morton stated that the Federal Power Commission had previously ruled that direct sales of gas to consumers of pipe line companies were not subject to regulations by such Commission; that Panhandle desired to sell as much industrial load direct to industries as possible in order to remove this segment of its business from the jurisdiction of such Commission; that Panhandle proposed to sell direct to the industrial consumers at the points of inter-connection between the facilities of Panhandle and the existing distributing utilities whose facilities would be utilized to transmit the natural gas for the account of the industrial consumers; that present plans of Panhandle contemplated limiting the size of interruptible industrial consumers that Panhandle desired to serve direct to such consumers as had a monthly consumption of about 10,000,000 or more cubic feet of gas. On the following day, Messrs. Morton and Ballard of Panhandle again stated to representatives of the Ingersoll Company that Panhandle intended to serve natural gas direct to their plant, and likewise intended to serve direct all other large industrial consumers up and down the pipe line of Panhandle; and under date of July 19, 1943, Panhandle forwarded to Service Company for acceptance, an extension of the Ingersoll [fol. 172] Supply Contract which provided for termination by either party on 60 days written notice, and on July 29, 1943, Service Company accepted such extension agreement and on the following day entered into a supplemental agreement with the Ingersoll Company fixing a like termination period. This latter agreement was filed with and approved by the Public Service Commission of Indiana. (See Sections 15, 16 and 17 of the Stipulation of Evidence.)

21. (a) Early in 1941, Panhandle and Central Gas carried on certain negotiations with reference to the terms and provisions of a new gas supply contract and on or about July 31, 1941, both companies executed and delivered a new supply contract (See "Exhibit L" of the Stipulation of Evidence). Panhandle subsequently informed Central Gas that its Board of Directors refused to approve said contract although the signature clause indicated that the officers of Panhandle, who had signed the same in its behalf, acted with authority. This refusal of approval was based upon the fact that the contract, in effect, would prohibit Panhandle from undertaking direct service to industrial customers in the area being served by Central Gas. Numerous conferences were held between representatives of Panhandle and Central Gas with reference to this matter during the remainder of 1941 and prior to August 4, 1942, on which latter day Central Gas directed to the Federal Power Commission for filing under the Natural Gas Act, a Petition, which is included in the Stipulation of Evidence as "Exhibit K."

(b) Thereafter, while said Petition, "Exhibit K," [fol. 173] was pending, Panhandle filed with the Federal Power Commission its notice of cancellation or termination dated May 18, 1943, which is attached to the Stipulation of Evidence and included therein as "Exhibit L," and which was in the words and figures following, to-wit:

"Notice of Cancellation or Termination

Federal Power Commission

Washington, D. C.

Gentlemen:

"Notice is hereby given that the following identified rate schedules filed with the Federal Power Commission by Michigan Gas Transmission Corporation (now Panhandle Eastern Pipe Line Company) are proposed

to be cancelled on the dates respectively set forth apposite the description of each of said schedules:

[fol. 174]

PEPL Co. Rate Schedule RPC Number	Name of Ultimate Industrial Customer	Date of Contract	Date of Proposed Term's
76	Guide Lamp Division of Gen. Motors Corp.	9/12/40	7/19/43
72	Sterling Glass Co.	7/ 8/40	8/ 3/43
Supp. 15 to 71	Slick Glass Co.	2/16/40	7/19/43
74	Owens-Illinois Glass Co.	5/27/41	7/19/43
Supp. 17 to 71	Foster-Forbes Glass Co.	10/31/40	8/ 3/43
Supp. 6 to 71	Aladdin Industries	10/ 5/38	7/19/43
Supp. 7 to 71	Sneath Glass Co.	10/ 5/38	7/19/43
Supp. 14 to 71	Hart Glass Div. of Armstrong Cork Co.	11/13/39	7/19/43
Supp. 5 to 71	Indiana Glass Co.	9/27/38	7/19/43
Supp. 13 to 71	Ball Brothers	11/ 1/39	7/19/43
Supp. 16 to 71	Banner Rock Div. of Johns-Manville Corp.	8/20/40	7/19/43
Supp. 11 to 71	General Insulating Co.	10/20/38	7/19/43
29	Banner Rock Div. of Johns-Manville Corp.	5/ 5/41	7/19/43
28	Eaton Canning Co.	5/ 5/41	7/19/43

[fol. 175] "The aforementioned Michigan Gas Transmission Corporation rate schedules numbers 28 and 29 are so designated for the reason that Panhandle Eastern Pipe Line Company has not been advised that new Panhandle Eastern Pipe Line Company schedule numbers have been assigned thereto.

"The above notice was served on Central Indiana Gas Company by depositing a copy thereof in the United States mail, addressed to Central Indiana Gas Company at Muncie, Indiana, on the eighteenth day of May, 1943.

"No negotiations are presently in progress for a continuance of the service to the customers covered by the said rate schedules, however, it is the intention of Panhandle Eastern Pipe Line Company to negotiate with said several industrial customers for a continuation of the service directly by Panhandle Eastern Pipe Line Company. Also, it is the intention of Panhandle Eastern Pipe Line Company to negotiate with Central Indiana Gas Company for the purpose of effecting necessary arrangements for the delivery of gas by Central Indiana Gas Company to each of said customers for the account of Panhandle Eastern Pipe Line Company.

"Panhandle Eastern Pipe Line Company is not advised whether Central Indiana Gas Company approves

[fol. 176] or disapproves of the cancellation and termination of said several rate schedules.

Yours very truly, Panhandle Eastern Pipe Line Company, by C. Buddrus, President.

Dated this 18th day of May, 1943, at Kansas City, Missouri."

(c) Thereafter, on June 3, 1943, representatives of Central Gas conferred with the Chairman of the Board and President, respectively, of Panhandle with respect to Panhandle's official declaration of intention to render direct gas utility service, contained in the above Notice of Cancellation, and at that conference, the representatives of Panhandle stated that Panhandle was interested in serving directly certain industrial customers of Central Gas but on some basis which would make such direct sales by Panhandle outside of the jurisdiction of the Federal Power Commission under the Natural Gas Act; that Panhandle was anxious to take over such business because it was an unregulated transaction both as to the Federal Power Commission and the Public Service Commission of Indiana, and that it intended to establish higher industrial rates based on a competitive fuel basis. On or about June 11, 1943, at another conference between representatives of Panhandle and Central Gas, the representatives of Panhandle again stated, in sub-[fol. 177] stance, that Panhandle intended to take over direct service to certain of the large industrial customers of Central Gas and any negotiations would have to be with that eventuality in mind.

(d) On August 9, 1943, Central Gas addressed a letter to Federal Power Commission with reference to the Notice of Cancellation dated May 18, 1943, filed by Panhandle with that body which said letter contained, in part, the following:

"It is the declared policy and intention of Panhandle Eastern Pipeline Company to abandon service to Central Indiana Gas Company for resale to these industrial consumers, and to try to take over and serve directly these industrial consumers so that the rates to be charged therefor will be beyond the regulatory control of the Federal Power Commission.

Since it is patently impossible, as shown by the attached map, for Panhandle Eastern Pipeline Company now to serve these industrial consumers except by means of the facilities of Central Indiana Gas Company and since, as stated by Panhandle Eastern Pipeline Company in its notice of cancellation, it intends to continue service for these industrial consumers, we do not see that there is any alternative for Central Indiana Gas Company but to disapprove and oppose vigorously the proposed cancellation. It is clear that the present and future public convenience and necessity will not permit such proposed abandonment. Further, it is noteworthy that the underlying purpose of such proposed abandonment is to try to effect a technical or paper rearrangement [fol. 178] of this sale to Central Indiana Gas Company for resale to industrial consumers, so that it will have the appearance of a direct sale and hence be at rates not subject to the jurisdiction of the Federal Power Commission."

(e) Under date of September 1, 1943, Panhandle addressed a letter to the Federal Power Commission and sent a copy thereof to Central Gas, which was in the following words and figures, to-wit:

"September 1, 1943.

Federal Power Commission, Washington, D. C.

Attention: Leon M. Fuquay, Secretary

Re: Docket No. G-495

DEAR SIRs:

"This letter is with reference to the letter of Central Indiana Gas Company to you, dated August 9, 1943, protesting our notice of cancellation, dated May 18, 1943, of contracts with Central Indiana Gas Company for its gas requirements for resale to fourteen of its industrial customers.

"We have not concluded negotiations with certain other war industries, not presently served by us, which would require volumes of gas equal to those volumes required by Central Indiana Gas Company

to serve said fourteen industrial customers. Moreover, because of the shortage and the conservation of critical materials, we are unable at this time to [fol. 179] obtain the necessary facilities to render direct service to any of the industries named in our notice of cancellation.

"Without altering our policy to any extent whatsoever with respect to this matter, but for the reasons above stated, we hereby withdraw said notice of cancellation, dated May 18, 1943, as amended and extended by our letters to Federal Power Commission, dated June 14, 1943, and July 23, 1943; without prejudice to our right of again filing a similar notice of cancellation, which we intend to do, at such time as it may appear to us to be desirable.

Very truly yours, — — —, President.

cc: Central Indiana Gas Company"

(f) On October 22, 1943, Central Gas addressed a letter to the Federal Power Commission with reference to the same matter, which was in the words and figures following:

"October 22, 1943."

Federal Power Commission, Washington, D. C.

Attention: Office of the Secretary

DEAR SIRs:

"We have received, presumably from Panhandle Eastern Pipeline Company, an unsigned copy of letter dated September 1, 1943, addressed to the Federal Power Commission and referring to *Docket No. G-495*.

"That letter withdraws the notice of cancellation by [fol. 180] Panhandle Eastern Pipeline Company to the Federal Power Commission, dated May 18, 1943, as amended and extended, relating to certain rate schedules therein described for natural gas service to Central Indiana Gas Company for resale to industrial consumers. Since our letter to you dated August 9, 1943, disapproving and opposing the proposed cancellation was in the nature of a protest responsive to the notice of cancellation, we should like

to advise that in view of the withdrawal of that notice of cancellation, the Commission may consider that the purpose of our protest has been effectuated. Accordingly, we are pleased to have the Commission consider our protest as withdrawn. Since there appears a statement in the letter of withdrawal by Panhandle Eastern Pipeline Company that they intend at some future time to file again a similar notice of cancellation, our withdrawal is necessarily without prejudice to our rights of filing again a protest or taking any other action which may be necessary or desirable to assure compliance by Panhandle Eastern Pipeline Company with the requirements of the Natural Gas Act.

Very truly yours, Central Indiana Gas Company, by Guy T. Henry, President."

(See Sections 18, 19, 20, 21; 22, 23, 24, 25 and 26 of the Stipulation of Evidence and the supporting Exhibits referred to therein, respectively.)

[fol. 181] 22. A compilation taken from the annual reports of the gas public utilities operating in Indiana under the jurisdiction of the Public Service Commission for the year 1943 shows that the book cost of gas plant (undepreciated), exclusive of common property used in other branches of the utilities business, is in excess of \$85,000,000; that the total gas consumption in thousands of cubic feet was 48,356,978.5 and that the total gross revenues derived from such sales of gas amounted to \$26,301,204.14. It also showed that of the total consumption above mentioned in thousands of cubic feet, industrial sales amounted to \$30,323,524.8, or 62.71% of the total; and that of the gross revenues above mentioned, sales to industry produced \$10,078,079.84, or 38.32% of the total. It also showed that the total number of consumers was 451,934 of whom 432,748, or 95.75%, were domestic consumers, 17,010, or 3.76%, were commercial and 1,242, or .028%, were industrial consumers (See Public Counsellor's Exhibit No. 1).

23. Oscar W. Morton, a Rate Engineer of Panhandle, testified before the Federal Power Commission on February 26, 1945, substantially as follows: Panhandle

would not willingly sell and deliver gas at Fortville, Indiana, for resale to the Dupont plant because they want to make as much money as they can out of that business and they can make more money selling gas directly than by selling it to someone, who, in turn, resells it and thus brings the transaction under the jurisdiction of the Federal Power Commission. If any other industrial plants than Dupont show an interest in obtaining gas, they would want to serve them directly [fol. 182] rather than serve them through the local distributing companies. It is the declared policy of Panhandle to secure as much of the load as direct as possible (See Public's Exhibit No. 2 and the testimony of Mr. Morton copied therefrom).

24. The development of its gas business in anything like its present proportion by Service Company has taken place almost wholly since natural gas was brought into Indiana by Panhandle, as hereinabove recited. This fact is illustrated by Service Company's Exhibit No. 1, which shows that for the year ended December 31, 1935, it had a total of gas customers of 41,245; whereas, at the year ended November 30, 1944, it had a total of such customers of 58,929 and that its average gas revenue per therm from residential customers went from \$.2374 in 1935 to \$.1576 for the twelve months period ended November 30, 1944 (See Service Company's "Exhibit No. 1").

25. It also appeared from Service Company's Exhibits No. 2 and 3 that if Service Company were to lose all of the gas revenues classified as industrial sales by reason of the pipe line company's furnishing the same, taking over those customers for direct service, it would mean loss in gross revenue in excess of \$1,000,000 per annum based on figures for the twelve months period ending November 30, 1944, and for the same period, a loss in net operating income before provision for Federal Income Taxes of \$293,730.22. And it appeared from testimony of Mr. Schiesz that in the event of that contingency happening, Service Company would only [fol. 183] be able to dispense with less than 2% of its gas utility plant property. If Service Company's industrial load should be lost to it by reason of the industrial customers being taken over by Panhandle for

direct service, only about \$100,000. of Service Company's investment in plant property could be retired and all of the remainder of its investment now devoted to gas service must be maintained and operated to serve Service Company's domestic and commercial users and the rates charged for service to the latter must necessarily be substantially increased to justify continuing the service to them. (Service Company's Exhibit No. 1 and testimony of Mr. Schiesz, pages 67-70 of Transcript.)

26. The fact that the distributing companies served natural gas to all three classes of gas consumers, i. e., industrial, commercial and domestic, has made possible a high standard of service at lower rates to the consumers in each of the three classes than would have been possible if only one of the classes had been served. It has meant that the residential and commercial customers have had the benefit of natural gas which would have been denied them unless the distributing companies' business had included service to all three classes of consumers. The installation of facilities to serve industrial consumers has made possible the development of domestic uses, including cooking and water heating, the higher B. T. U. gas for house heating and the use of gas for commercial cooking purposes by restaurants, hotels and others. All of these services under old methods were prohibitive in cost or the gas was not available in the quantities in which the customers [fol. 184] wished to use it, due to the inadequacy of facilities and of the supply of gas. It was through the development by the distributing companies of the industrial business that they have been able to improve materially the over-all load factor of gas purchased. This has also enabled the distributing companies to spread their fixed costs, such as interest, taxes and depreciation, which are constant in every-day operation, over a larger number of units of service, which automatically has given the benefit of that condition and fact to each of the three classes of consumers and has made possible the development of rates for service which were attractive not only to one of the three classes but to each of them; all of which has had the effect of promoting greater public interest in the area

served by these distributing companies in the use of natural gas and in advancing the public welfare in those areas. (Pages 60, 61, 63, 75, 82 of Transcript.)

27. It appears from Central Gas' Exhibit No. 1 and the testimony with reference thereto of Guy T. Henry, its President (see pages 71 to 77, both inclusive, of the Transcript) that for the calendar year ended December 31, 1944, the total gross revenues from sales of gas of Central Gas amounted to \$4,076,369.11; that its sale to industrial users grossed \$2,677,265.74; that for the same period its net operating income, before provision for Federal Income Taxes, amounted to \$683,393.58; that if Central Gas should lose all of its industrial customers by reason of their being taken over by Panhandle for direct service, it would have resulted in a loss in net revenues of \$514,206.67 (see Central Gas' "Exhibit No. 1" and the supporting schedules); that [fol. 185] if Panhandle were to take over all of the industrial customers of Central Gas for direct service, Central Gas would be able to retire only about 1% or 2% of its investment in plant property and would find it necessary to maintain and continue to use all of the remainder of its plant property in continuing to furnish service to its domestic and commercial customers; that Central Gas has approximately 26 industrial customers, each of which use in excess of twenty-five million cubic feet of gas per year, and which, in the aggregate, use approximately nine billion feet of gas per year and from which Central Gas obtains gross revenues of approximately two and one-half million dollars; that the 14 customers mentioned in Exhibit L to the Stipulation of Facts, being the Notice of Cancellation filed by Panhandle with the Federal Power Commission under date of May 18, 1943, were among such 26 industrial customers using approximately 90% of all of the gas sold by Central Gas to industrial customers; and that if Panhandle should take over this industrial business of Central Gas and serve the customers directly, it would certainly result in a substantial increase in the present rates of Central Gas to its domestic and commercial customers in order to enable it to continue to carry on its business and to pay a return on its investment.

28. It appears from Kokomo Company's Exhibit No. 1 and the testimony of its President and General Manager, Mr. Hahn, with reference thereto, that for the 12 months period ending December 31, 1944, its total gross revenues amounted to \$485,170.41, of which [fol. 186] \$198,630.79 was "derived from industrial sales; that if these industrial sales had been eliminated that year, it would have resulted in a reduction in net operating income, before provision for Federal Income Taxes, from \$128,157.86 to \$21,755.78, a total loss of \$106,402.08; that if the industrial business of Kokomo Company were taken over and served directly by Panhandle the amount of plant property which Kokomo Company would be able to retire would be so slight as to be almost negligible, a matter of four or five thousand dollars; and that it would further result in a considerable revision of its present rates for domestic and commercial customers. (See Kokomo Company's "Exhibit No. 1" and "Exhibit No. 2" and the testimony with reference thereto of Mr. Hahn appearing on pages 78 to 90, both inclusive, of the Transcript.)

29. The use to which Panhandle is placing its facilities in Indiana and plans to place them in the future is shown by the following:

a. Panhandle has declared to Kokomo Company that "Panhandle desired, and was planning in the future, to make all industrial gas supply contracts" to large industrial users "direct with the industrial consumers; that some arrangement would have to be worked out whereby the interest of Kokomo Company in such gas sales would be continued, but the ultimate consumer would no longer be a customer of Kokomo Company, but would be a customer of Panhandle; that if Panhandle sold direct to Continental Steel Corporation, the sale would not come under the jurisdiction of the Federal Power Commission; [fol. 187] and that such was the chief objective of Panhandle in making such contract direct with the industrial consumers." (Stipulation of Evidence, Section 14.)

b. Panhandle solicited certain large industrial consumers of Service Company and stated to Service

Company "that the Federal Power Commission had previously ruled that direct sales of gas to consumers of pipeline companies were not subject to regulation by such commission; that Panhandle desired to sell as much industrial load direct to industries as possible in order to remove this segment of its business from the jurisdiction of such commission; that Panhandle proposed to sell direct to industrial consumers at the points of inter-connection between the facilities of Panhandle and the present distributing utilities, that the facilities of the present distributing utilities would be utilized to transmit the natural gas for the account of the industrial consumers, who would reimburse the distributing utilities in an amount approximating the 20% of the rate being received by them on the sale of the interruptible natural gas; that present plans of Panhandle contemplated limiting the size of interruptible industrial consumers that Panhandle desired to serve direct to such consumers as had a monthly consumption of about 10,000,000 or more cubic feet of gas; and that he (Panhandle's representative) had been directed by Panhandle to outline the plan to the separate industrial consumers now served with interruptible gas by Service Company." Panhandle declared to Service Company [fol. 188] and certain of its industrial customers that Panhandle "intended to serve directly other large industrial gas consumers up and down the pipe line of Panhandle." (Stipulation of Evidence, Sections 15 and 16.)

c. Panhandle refused to make any contract with Central Gas for a supply of natural gas unless it "was based upon the policy that Panhandle should undertake at some time or other to serve directly some or all of these industrial consumers which are now being served by Central Indiana with natural gas purchased by Central Indiana Gas from Panhandle." (Stipulation of Evidence, Section 20); and Panhandle declared this policy in 1942 was the policy of the Board of Directors of Panhandle and that "its policy underlying that position, is to take over and serve directly such industrial customers

which it refuses to serve through Central Gas." (Stipulation of Evidence, Section 21.)

d. The Chairman of the Board and the President of Panhandle both stated "that Panhandle was interested in securing directly certain industrial customers of Central Gas, but on some basis which would make such direct service by Panhandle outside the jurisdiction of the Federal Power Commission under the Natural Gas Act. Said Mr. W. G. McGuire (Chairman of the Board of Panhandle) stated at such conference that Panhandle was anxious to take over such business (direct sales to industrial customers) because it was an unregulated transaction both as to the Federal Power Commission and the Public Service Commission of Indiana [fol. 189] and that he intended to establish industrial rates on a competitive fuel basis." Said representative of Panhandle stated that "Panhandle intended to take over direct service to certain large industrial consumers of Central Gas and any negotiations would have to be with that eventuality in mind." (Stipulation of Evidence, Section 23.)

e. Panhandle seeks to sell directly any industrial plant using natural gas in quantities agreeable to Panhandle and not to sell the gas to a distributing company for resale; and declares "it is our policy to serve as much of the load as direct as possible" and that "it is their policy to obtain any place on or adjacent to their system as much direct industrial gas as they can," because Panhandle contends such business is beyond regulation by any regulatory body or agency, thus enabling Panhandle to make as much money as possible from the business. (Transcript of Cross-Examination of Oscar W. Morton, Rate Engineer for Panhandle, before Federal Power Commission on February 26, 1945, as shown at pages 44 to 46, inclusive, of Transcript of Proceedings.)

[fol. 190]

#### OPINION AND CONCLUSIONS

This investigation presents the basic problem of whether or not this Commission has *any* regulatory jurisdiction over direct sales of natural gas to Indiana consumers.

when such sales are made, under the circumstances shown in this record, by the company transporting the gas into the state from outside sources. No issue is here raised as to regulation of the transportation of gas into or through the state, or of the sale of such gas in the state to other public utilities for resale for ultimate public consumption for domestic, commercial, industrial or any other use. Regulatory control of such matters has been specifically committed to the Federal Power Commission by Section 1 (b) of the Natural Gas Act.

Nor is any issue presently involved as to any specific regulatory action by the Commission over the rates or service of Panhandle in Indiana in the case of sales direct to Indiana consumers other than the requiring of the filing of tariffs and reports. The fundamental question is whether the direct consumer sales of Panhandle are subject to regulation by this Commission in any respect. If so, it is clear, and the Commission does not understand that counsel for Panhandle dispute, that the tariffs of rates, rules and regulations for such service by Panhandle should be on file with the Bureau of Tariffs of the Commission and that annual reports of Panhandle should have been filed with the Commission.

[fol. 191] The facts establish, among other things, that indirectly, i.e. by sales for resale, Panhandle supplies gas generally for industrial use. Panhandle also, either from its ~~main or~~ branch lines, supplies gas directly to more than a score of consumers for industrial use, and is and has been active in seeking and securing where possible such consumers making direct purchases. The facts show its admitted intention of rendering direct service wherever large industrial customers can be obtained.

At the present time, Panhandle has direct service in Indiana to Anchor-Hocking. This direct service was commenced by Panhandle in 1942 by its taking over service to such customer from Indiana Gas, then an Indiana subsidiary of Panhandle, before Panhandle disposed of its full stock ownership in Indiana Gas.

The physical set-up under which this direct consumer sale is made should perhaps be briefly summarized here, since counsel for Panhandle rely heavily on this in asserting escape from the jurisdiction of the state.

The facts show that Panhandle brings gas into and through Indiana by means of high pressure transmission

lines. The pressure in these lines vary from 250 to 600 pounds. From these main lines, extend branch or lateral lines, generally smaller in size than the main lines, and carrying gas at lower pressures than in the main line. One of these branch lines is the "Winchester line" by means of which gas is transported from a main line north (at pressures from 100 to 80 pounds per square inch) both for delivery to Anchor-Hocking and for delivery to [fol. 192] Indiana-Ohio Company for resale. The Winchester line was constructed in 1931, but until November 1934, when the sale of natural gas to Indiana-Ohio Company was commenced, the line was used wholly for the purpose of transporting gas sold to Indiana Gas for resale to Anchor-Hocking. Near the end of the Winchester line, that line, as presently constructed, branches, one branch leading to the meter house at the outlet side of which deliveries are made to Indiana-Ohio Company, and the other leading to the meter house at the outlet side of which deliveries are made to Anchor-Hocking. In the meter houses, among other things, pressures are reduced to those at which delivery is desired, which in the case of Anchor-Hocking is in part at 40 pounds per square inch and in part at 10 pounds per square inch. Deliveries to Indiana-Ohio Company are at pressures ranging from 25 to 9 pounds per square inch depending upon the season of the year. In both cases, all the facilities (other than the real estate) up to the pipe at the outlet side of the meter house are owned and operated by Panhandle.

These physical facts are here outlined, not because the Commission deems them of any controlling importance in the decision of this cause, but because counsel for Panhandle have stressed them in their briefs and oral argument as physical factors establishing that the supply to Anchor-Hocking is in interstate commerce, which fact they argue precludes regulatory jurisdiction by the state. For reasons to be hereafter discussed, this commission believes [fol. 193] that such views of counsel are untenable and based upon a misconception of controlling principles.

Counsel for Panhandle frankly conceded in their oral argument that unless Panhandle is immune from regulatory control of the State of Indiana because of the restrictions of the commerce clause of the federal constitution, it is subject to the regulation of this state as a public utility operating within the state. They strenuously urge, however, that

interstate commerce provides Panhandle immunity from regulation until Congress acts. They assert that the Natural Gas Act shows a policy on the part of Congress to have direct consumer sales of natural gas unregulated if made in interstate commerce; and that, regardless of congressional intent, the direct industrial sales of Panhandle, as interstate commerce, are beyond the pale of any regulation by this Commission because of prohibitions imposed by the interstate commerce clause of the federal constitution.

The Commission believes there can be no question but that Panhandle's operations in Indiana are subject to its jurisdiction except to such extent as constitutional limitations or federal regulation prohibit such jurisdiction. The record here makes it indisputably clear that the business of Panhandle is that of furnishing, directly and indirectly, natural gas to and for the public. In such activity, and the devotion of its facilities thereto, it is a public utility both within the general sense of that term and within the specific [fol. 194] definition thereof in the Public Service Commission Act. As a public utility its rates and service are subject to governmental regulation. The question is only to what extent regulation by Indiana under its act may be applied in view of the interstate movement of the gas that finally reaches the consumer; and this investigation is limited to the situation only of supplying direct to consumers.

In their briefs, counsel for Panhandle asserted that no certificate of convenience and necessity was or could be required of Panhandle in respect of its direct consumer sales because of their interstate character. From this assumption they argued that this fact showed immunity from regulation under the state act. The Commission is not here required to pass upon the assumption made that a certificate can not be required by the State, for the reason that, because of the time the Anchor-Hocking service was commenced, there are no provisions of the Indiana statute which require any certificate as a condition precedent for the service. The existence of a certificate of necessity and convenience or any other franchise grant is not, however, the basis of regulatory control of public utility service by this Commission under the Public Service Commission Act. That act was passed to safeguard the public interest in respect of public utility service. It has been specifically construed by the Supreme Court of Indiana to have such broad purpose and scope, and to be not limited to regulation of utilities to

whom certificates of public convenience and necessity have [fol. 195] been granted. *City of Logansport v. Public Service Commission*, 202 Ind. 523, 177 N. E. 249 (1931).

The Commission has concluded, after its consideration of this case, that neither counsel's position as to congressional policy nor their position as to the restrictive scope of the commerce clause of the federal constitution are tenable. The reason upon which these conclusions are based will be briefly discussed.

#### a. The Natural Gas Act and Congressional Policy

The bill for federal regulation of natural gas transportation and sale, which was the basic pattern of the final Natural Gas Act, was introduced in Congress in 1936. It was the subject of extensive public hearings in 1936 and 1937 held by committees of the House of Representatives. (Report of Hearing by House of Representatives' Subcommittee of Committee on Interstate and Foreign Commerce held April 2, 3, 7, 14 and 15, 1936; Report of Hearing by House of Representatives' Committee on Interstate and Foreign Commerce held March 24-25, 1937). The bill as originally introduced contained jurisdictional provisions (Section 1 (b)) which were from the start of the hearings the subject of much debate as to the federal jurisdiction provided for. Under the original provision "high-pressure" and "low-pressure" mains were jurisdictional determinatives. The specific provision was:

"(b) The provisions of this Act shall apply to the transportation of natural gas in high-pressure mains [fol. 196] in interstate commerce and to natural-gas companies engaged in such transportation, but shall not apply to the distribution of natural gas moving locally in low-pressure mains or to facilities used for such distribution or to the production of natural gas: *Provided*, That nothing in this Act shall be construed to authorize the Commission to fix rates or charges for the sale of natural gas distributed locally in low-pressure mains or for the sale of natural gas for industrial use only."

Prior to the reporting out of the Bill by the Committee, Section 1 (b) underwent several changes. That section as

sent to the House by the Committee, and as contained in the Natural Gas Act as passed, provides:

"(b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

At the initial hearings, Mr. A. R. McDonald, Wisconsin Commissioner, Chairman of the Committee on Legislation of the National Association of Railroad and Utility Commissioners, presented a resolution of the association asking Congress to limit the federal rate regulation to the sale of [fol. 197] natural gas for resale. In this connection he pointed out that the pipe line companies were presently wholly unregulated only so far as they did not sell to the consumer but only to distributing companies, and asked that state regulation be not invaded by the legislation.

John E. Benton, Esquire, General Solicitor for the association, in discussing the association's resolution and proposed amendments, said that they were designed to make it clear that the Federal Act did not take from the states the regulation of rates on sales made direct to industrial customers. He said that the request of the association was

"based upon the fact that the United States Supreme Court has recognized that the distribution of gas locally to consumers either for domestic or industrial use, is a local business, and may be reached, controlled and regulated by local authorities, municipalities and states, as provided by state law, so long as Congress withholds its hand from regulation. The states can now regulate those rates to consumers until Congress enters that field and crowds the states out."

Mr. Benton further said, after a discussion of the authorities:

"It was evidently the purpose of the one who drew the act to reserve to the State authorities the right to

regulate the consumer rate, even though the consumer was an industrial user who received his supply in a high pressure main.”;

and stated that his amendment was to make it clear that [fol. 198] the proposed federal act did not apply to any consumer receiving gas for his own consumption “in either industrial or domestic use.”

The issue of whether or not sales of gas for industrial use should be and were subject to governmental regulation was specifically brought to the fore during the hearings. The subsequent action of the House Committee leaves no room for real doubt that there existed a congressional intent that industrial sales should all be subject to governmental regulation, either state or federal.

At the 1937 hearings Mr. William A. Dougherty, a New York attorney connected with three of the largest pipeline companies and with other gas companies, proposed certain amendments to the Bill. The first of these was one which, he explained, was for the purpose of making it clear that no sales, direct or indirect, for industrial purposes were within the provisions of the legislation. Following this presentation, Mr. Benton asked, and was granted, leave to present written comments upon the suggested amendments. In opposing Mr. Dougherty's first suggestion and submitting his own proposed amendment for clarification of the matter, Mr. Benton, among other things, stated (Report of Hearings on March 24-25, 1937, p. 143):

“In this connection I point out that the exemption of industrial gas, as I understand your bill, is not for the purpose of exempting industrial gas from all regulation, but for the purpose of avoiding any possible [fol. 199] claim that because some industrial user may be taking a very large quantity of gas, service to him, on account of its wholesale character, should be considered subject to regulation by the Federal Commission.

“Service to an industrial user is just as much a local service, and within State jurisdiction to regulate until Congress acts, as is a sale to a householder for domestic use. Until Congress occupies the field, a sale for industrial use is accordingly subject to state regulation under the rule laid down in *Pennsylvania Gas Company v. New York Public Service Commission*, above cited.

"Sales for industrial use ought not to be exempt from all regulation, for the result may very well be that unjustifiable discrimination will result, and there will be no commission to which complaint may be made. Sales for industrial uses plainly ought to be subject to regulation by the same Commission which regulates sales to other classes of consumers, so that just and reasonable rates, for the several classes of service, properly related to each other, may be established. Under the bill as drawn, all consumer sales are exempt from Federal regulation and left to State regulation. The language of the suggested amendment just proposed leaves this purpose unaffected, and makes clear that the regulation of inter-company sales is designed for the protection of the consuming public, as a part of the complete regulation of the entire utility service."

In its initial report on the Natural Gas Act, made on May 13, 1936 (74th Cong., 2d Sess., Rep. No. 2651), the Committee [fol. 200] pointed out that the Bill exempted from the jurisdiction of the federal commission the sale of natural gas for industrial use, the states not being deprived by the federal act of any lawful authority over the distribution and sale of natural gas locally.

In the discussion of the general purposes of the proposed act, the report states:

"The main purpose of the bill is to provide for the regulation of the transportation and sale of natural gas in those cases in which the state regulatory bodies do not have jurisdiction. . . .

"Under the decisions of the United States Supreme Court rates charged in interstate wholesale transactions may not be regulated by the states. Such transactions are defined in the bill to mean sales of natural gas for resale. The Commission is given no jurisdiction over local rates even where the natural gas moves in interstate commerce. . . .

"The bill takes no authority from State Commissions and is so drawn as to be a complement, and is in no sense a usurpation, of State regulatory authority . . . Mr. A. B. McDonald, chairman of the Committee on Legislation of the National Association of Railroad and Utility Commissioners, and Mr. John E. Benton, general solicitor of the National Association of

Railroad and Utility Commissioners, appeared at the hearing before the sub-committee in support of the bill."

In its final report (75th Cong., 1st Sess., Report No. 709), made on April 28, 1937, which report was adopted by the [fol. 201] Senate Committee together with a recommendation that the Natural Gas Act be passed, the Committee stated:

"This bill is substantially identical with H. R. 12680 which, as amended, was reported by the Committee on Interstate and Foreign Commerce of the Seventy-fourth Congress, second session, with a recommendation that it pass. If enacted, the present bill would for the first time provide for the regulation of natural-gas companies transporting and selling gas in interstate commerce. It confers jurisdiction on the Federal Power Commission over the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use. The States have, of course, for many years regulated sales of natural gas to consumers in intrastate transactions. The States have also been able to regulate sales to consumers even though such sales are in interstate commerce, such sales being considered local in character and in the absence of congressional prohibition subject to State regulation. (See *Pennsylvania Gas Company v. Public Service Commission* (1920), 252 U. S. 23). There is no intention in enacting the present legislation to disturb the States in their exercise of such jurisdiction. However, in the case of sales for resale, or so-called wholesale sales, in interstate commerce (for example, sales by producing companies to distributing companies) the legal situation is different. Such transactions have been considered to be not local in character and, even in the absence [fol. 202] of Congressional action, not subject to State regulation. (See *Missouri v. Kansas Gas Company*, (1924) 265 U. S. 298, and *Public Service Commission v. Attleboro Steam & Electric Company*, (1927), 273 U. S. 83). The basic purpose of the present legislation is to occupy this field in which the Supreme Court has held that the States may not act."

The report then refers to the fact that the regulation provided "takes no authority from state Commissions" but "complements" state regulatory authority, and that the states and the state commissioners' association favored the passage of the Natural Gas Act; and refers to the resolution filed by the association and the letter filed by John E. Benton, Esquire, its general counsel.

The report continues:

"Your commission believes that this legislation is highly desirable to fill the gap in regulation that now exists by reason of the lack of authority of the State Commissions."

Following the hearings the Bill, before being reported out by the Committee, was further revised to its enacted form and clearly gives the federal commission full rate and service regulatory jurisdiction over all gas sold for resale regardless of the purpose for which such gas is to be used by the consumer. The revised Bill continued the basic principle of non-interference with state regulatory jurisdiction in all direct consumer sales.

In cases arising under the Natural Gas Act the Supreme Court of the United States has had occasion to review the [fol. 203] legislative history of the statute and to point out the complementary nature thereof.

In *Public Utility Commission of Ohio v. United Fuel Gas Company*, 317 U. S. 456, 87 L. ed. 396 (1942), the court said, pp. 402-3:

"It is clear, as the legislative history of the Act amply demonstrates, that Congress meant to create a comprehensive scheme of regulation which would be complementary in its operation to that of the states, without any confusion of functions. The Federal Power Commission would exercise jurisdiction over matters in interstate and foreign commerce, to the extent defined in the Act, and local matters would be left to the state regulatory bodies. Congress contemplated a harmonious, dual system of regulation of the natural gas industry—federal and state regulatory bodies operating side by side, each active in its own sphere. See H. Rep. No. 2651, 74th Cong., 2d Sess., pp. 1-3; H. Rep. No. 709, 75th Cong., 1st Sess., pp. 1-4; Sen. Rep. No. 1162, 75th Cong., 1st Sess."

And in *Federal Power Commission v. Hope Natural Gas Company*, 320 U. S. 591, 88 L. ed. 333 (1944), the court, through Mr. Justice Douglas, stated, p. 349:

"We pointed out in *Illinois Natural Gas Co. v. Central Illinois Pub. Serv. Co.*, 314 U. S. 498, 506, 86 L. ed. 371, 376, 62 S. Ct. 384, that the purpose of the Natural Gas Act was to provide, 'through the exercise of the national power over interstate commerce, an agency for regulating the wholesale distribution to public service companies of natural gas moving inter-[fol. 204] state, which this Court had declared to be interstate commerce not subject to certain types of state regulation.' As stated in the House Report the 'basic purpose' of this legislation was 'to occupy' the field in which such cases as *Missouri ex rel. Barrett v. Kansas Natural Gas Co.*, 265 U. S. 298, 68 L. ed. 1027, 44 S. Ct. 544, and *Public Utilities Commission v. Atleboro Steam & Electric Co.*, 273 U. S. 85, 71 L. ed. 549, 47 S. Ct. 294, had held the States might not act. H. Rep. No. 709, 75th Cong., 1st Sess., p. 2. In accomplishing that purpose the bill was designed to take 'no authority from State commissions' and was 'so drawn as to complement and in no manner usurp State regulatory authority.' Id. p. 2. And the Federal Power Commission was given no authority over the 'production or gathering of natural gas.' § 1 (b).

"The primary aim of this legislation was to protect consumers against exploitation at the hands of natural gas companies. Due to the hiatus in regulation which resulted from the *Kansas Natural Gas Co.* Case and related decisions state commissions found it difficult or impossible to discover what it cost interstate pipeline companies to deliver gas within the consuming states; and thus they were thwarted in local regulation. H. Rep. No. 709, supra, p. 3. Moreover, the investigations of the Federal Trade Commission had disclosed that the majority of the pipe-line mileage in the country used to transport natural gas, together with an increasing percentage of the natural gas supply for pipe-line transportation, had been acquired by a handful of holding companies. State commissions, independent producers, and communities having or seeking the service [fol. 205] were growing quite helpless against these

combinations. These were the types of problems with which those participating in the hearings were pre-occupied. Congress addressed itself to those specific evils."

And in his concurring-opinion, Mr. Justice Jackson, referring to judicial determination of regulatory power, states, p. 370:

"Then came issues as to state power to regulate as affected by the commerce clause. *Public Utilities Commission v. Landon*, 249 U. S. 236, 63 L. ed. 577, 39 S. Ct. 268, PUR 1919C 834 (1919); *Pennsylvania Gas Co. v. Public Serr. Commission*, 252 U. S. 23, 64 L. ed. 434, 40 S. Ct. 279, PUR 1920E 18 (1920). These questions settled, the Court again was called upon in natural gas cases to consider state rate making claimed to be invalid under the Fourteenth Amendment."

It seems to this Commission it would be patently absurd to conclude that Congress in the Natural Gas Act, which regulated service and rates in cases of natural gas sold to a distributing utility for resale to industrial consumers, announced a policy that there was such a lacking of public interest in direct sales to industrial consumers that such sales should be free from regulatory control by any governmental agency. Again and again in the legislative history is the plain assertion that the existing regulatory gap was to be filled, and that it was to be filled without encroachment on state functioning. To torture that clear purpose [fol. 206] into an intention that a large segment of the distribution of gas was to be uncontrolled, if the device of direct consumer sales by pipe-line companies was resorted to, would be to disregard an intent that Congress has plainly shown, and to ignore applicable principles to the end that competition in public utility service, discrimination in such service, and rates for such service to a class of users shall be uncontrolled and that the ability of the state to protect the interests of such class and the other classes of gas users would be inescapably impaired. This Commission finds no basis in the federal constitution or in the history of the legislation or in the decisions of the Supreme Court of the United States for such a conclusion as has been urged. It finds in that history, and in the decisions of that court,

and in the necessities of public interest, impelling reason to reject such contention. It finds in that history a clear showing that Congress recognized that all public utility sales of natural gas should be subject to regulation, and that by the Natural Gas Act it provided regulation within the full field in which, under the federal constitution, the states were powerless to act, but carefully preserved to the states full rate and service regulatory control in all other cases.

b. Commerce Clause of Federal Constitution, if Applicable,  
Would Not Prohibit State Regulation

But counsel insist that, regardless of any congressional view that may be shown by the Natural Gas Act, constitutional prohibitions preclude state regulation of the sales [fol. 207] direct to Anchor-Hocking because the sales are in interstate commerce. Much argument can be expended, pro and con, on the question whether or not the sales of gas made direct to an industrial consumer under the factual circumstances shown in this case are sales in intrastate commerce or in interstate commerce. If the answer be sought wholly or primarily in physical characteristics, and logical consistency in the application of these physical characteristics is attempted, difficulties are soon encountered in the attempt to fix the line of demarcation. After careful study of the court decisions, this Commission is of the view that there is much in the opinions of the United States Supreme Court in *Missouri ex rel. Barrett v. Kansas Natural Gas Company*, 265 U. S. 298, 68 L. ed. 1027 (1924), *East Ohio Gas Company v. Tax Commission of Ohio*, 283 U. S. 465, 75 L. ed. 1171 (1931), and *Southern Natural Gas Corporation v. Alabama*, 301 U. S. 148, 81 L. ed. 970 (1937), and in its most recent opinion on this subject, *Connecticut Light & Power Company v. Federal Power Commission*, 323 U. S. —, 89 L. ed. Adv. Op. 691 (1945), to sustain the view that the direct industrial sales made by Panhandle, in the manner and under the circumstances shown by this record, are sales in intrastate commerce rather than sales in interstate commerce. See, also, the note by Professor Thomas Reed Powell on this subject in 58 Harvard Law Review 1072 (September 1945) for a careful analysis and illuminating discussion of this problem. The lower court decisions on which counsel for Panhandle rely on this point

[fol. 208] seem to this Commission to have overlooked the basic principles as set forth and discussed by the Supreme Court of the United States in the cases above cited. Nor does this Commission think that the recent natural gas cases decided by that court (*Colorado Interstate Gas Company v. Federal Power Commission*, 89 L. ed. Adv. Op. 807; *Colorado-Wyoming Gas Company v. Federal Power Commission*, 89 L. ed. Adv. Op. 831; and *Detroit et al. v. Panhandle Eastern Pipe Line Company*, 89 L. ed. Adv. Op. 836) can be deemed to represent either a reversal of those principles or a determination of the character of direct sales made in the manner shown by this record. Assuming the correctness of counsel's view that the court did characterize the industrial sales referred to in those cases as interstate ones, it is apparent from the issues and opinion that no problem of the exact character of the direct industrial sales was at issue since, be they interstate or intrastate, such sales were by the express provisions of the Natural Gas Act outside the jurisdiction of the Federal Power Commission. There is nothing in the opinions to indicate that the court had presented to it, or gave any consideration to, the factual characteristics attendant to those sales or tested them on the basis of its prior decisions pertinent to this point or considered them in the light of principles shortly thereafter announced in the *Connecticut* case.

This Commission is, of course, hesitant to decide controverted legal points when such decisions can be avoided, [fol. 209] although it will not shirk such duty when necessary as a basis for determining the duties placed upon it by the legislature. Fortunately, the issues of this investigation do not turn upon the interstate or intrastate character of the sales direct to the consumer. Whether those sales be interstate or intrastate, this Commission believes it has a regulatory control thereof. In the judgment of this Commission such sales, even if deemed interstate, are subject to state regulation because the matter is one within that class where a predominate local interest admits of reasonable, non-discriminatory regulation or exercise of police power by the state until and unless Congress sees fit to assert its superior right of control.

This principle was early announced by the Supreme Court of the United States, and has been often restated and applied by it.

In the early case of *Wilson v. Blackbird Creek Marsh Co.*, 2 Peters 245, 7 L. ed. 412 (1829); the Supreme Court of the United States upheld an act of Delaware authorizing the construction of a dam across a navigable stream. Mr. Chief Justice Marshall stated, p. 414:

"The counsel for the plaintiffs in error insist that it comes in conflict with the power of the United States 'to regulate commerce with foreign nations and among the several States.'

"If Congress had passed any Act which bore upon the case; any Act in execution of the power to regulate commerce, the object of which was to control State [fol. 210] legislation over those small navigable creeks into which the tide flows, and which abound throughout the lower country of the Middle and Southern States, we should feel not much difficulty in saying that a State law coming in conflict with such Act would be void. But Congress has passed no such Act. The repugnancy of the law of Delaware to the Constitution is placed entirely on its repugnancy to the power to regulate commerce with foreign nations and among the several States; a power which has not been so exercised as to affect the question.

"We do not think that the Act empowering the Black Bird Creek Marsh Company to place a dam across the creek, can, under all the circumstances of the case, be considered as repugnant to the power to regulate commerce in its dormant state, or as being in conflict with any law passed on the subject."

And in *Cooley v. Board of Wardens*, 12 Howard 299, 13 L. ed. 996 (1851), that court in upholding pilotage regulations by Pennsylvania said, pp. 1004-5:

"... we are brought directly and unavoidably to the consideration of the question, whether the grant of the commercial power to Congress, did *per se* deprive the States of all power to regulate pilots. This question has never been decided by this court, nor, in our judgment, has any case depending upon all the considerations which must govern this one, come before this court. The grant of commercial power to Congress does not contain any terms which expressly exclude the [fol. 211] States from exercising an authority over its

subject matter. If they are excluded it must be because the nature of the power, thus granted to Congress, requires that a similar authority should not exist in the States. If it were conceded on the one side, that the nature of this power, like that to legislate for the District of Columbia, is absolutely and totally repugnant to the existence of similar power in the States, probably no one would deny that the grant of the power to Congress, as effectually and perfectly excludes the States from all future legislation on the subject, as if express words had been used to exclude them. And on the other hand, if it were admitted that the existence of this power in Congress, like the power of taxation, is compatible with the existence of a similar power in the States, then it would be in conformity with the contemporary exposition of the Constitution (Federalist, No. 32), and with the judicial construction, given from time to time by this court, after the most deliberate consideration, to hold that the mere grant of such a power to Congress, did not imply a prohibition on the States to exercise the same power; that it is not the mere existence of such a power, but its exercise by Congress, which may be incompatible with the exercise of the same power by the States, and that the States may legislate in the absence of congressional regulations. *Sturges v. Crowninshield*, 4 Wheat. 193; *Moore v. Houston*, 5 Wheat. 1; *Wilson v. Black Bird Creek Marsh Co.*, 2 Peters 251.

"The diversities of opinion, therefore, which have existed on this subject, have arisen from the different views taken of the nature of this power. But [fol. 212] when the nature of a power like this is spoken of, when it is said that the nature of the power requires that it should be exercised exclusively by Congress, it must be intended to refer to the subjects of that power, and to say they are of such a nature as to require exclusive legislation by Congress. Now, the power to regulate commerce, embraces a vast field, containing not only many, but exceedingly various subjects, quite unlike in their nature; some imperatively demanding a single uniform rule, operating equally on the commerce of the United States in every port; and some, like the subject now in question, as imperatively de-

manding that diversity, which alone can meet the local necessities of navigation.

“Either absolutely to affirm, or deny, that the nature of this power requires exclusive legislation by Congress, is to lose sight of the nature of the subjects of this power, and to assert concerning all of them, what is really applicable but to a part. Whatever subjects of this power are in their nature national, or admit only of one uniform system, or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress. That this cannot be affirmed of laws for the regulation of pilots and pilotage is plain. The Act of 1789 contains a clear and authoritative declaration by the first Congress, that the nature of this subject is such, that until Congress should find it necessary to exert its power, it should be left to the legislation of the States; that it is local and not national; that it is likely to be the best provided for, not by one system, or plan of regulations, but by as many as the legislative discretion of the several States [fol. 213] should deem applicable to the local peculiarities of the ports within their limits.”

In the case of *Simpson v. Shepard* (*Minnesota Rate Cases*), 230 U. S. 352, 57 L. ed. 1511 (1913), Mr. Justice Hughes, after a detailed discussion of the principles involved and the limitations on state authority, thus summarized the rule governing the regulatory power of the states as to interstate commerce, pp. 1542-3:

“But within these limitations there necessarily remains to the states, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction, although interstate commerce may be affected. It extends to those matters of a local nature as to which it is impossible to derive from the constitutional grant an intention that they should go uncontrolled pending Federal intervention. Thus, there are certain subjects having the most obvious and direct relation to interstate commerce, which nevertheless, with the acquiescence of Congress, have been controlled by state legislation from the foundation of the government because of the necessity that they should not remain unregulated, and that their regula-

tion should be adapted to varying local exigencies; hence, the absence of regulation by Congress in such matters has not imported that there should be no restriction, but rather that the states should continue to supply the needed rules until Congress should decide to supersede them. . . . Our system of government is a practical adjustment by which the national authority, as conferred by the Constitution, is maintained in its full scope, without unnecessary loss of [fol. 214] local efficiency. Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the state appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power. In such case, Congress must be the judge of the necessity of Federal action. Its paramount authority always enables it to intervene at its discretion for the complete and effective government of that which has been committed to its care, and, for this purpose and to this extent, in response to a conviction of national need, to displace local laws by substituting laws of its own. The successful working of our constitutional system has thus been made possible."

In *Port Richmond etc. Ferry Company v. Board of Chosen Freeholders*, 234 U. S. 317, 58 L. ed. 1330 (1914), a case specifically upholding state regulation of rates for ferriage between two states, the basic principle was thus stated by Mr. Justice Hughes, pp. 1335-6:

"Coming, then, to the question now presented,—whether a state may fix reasonable rates for ferriage from its shore to the shore of another state,—regard must be had to the basic principle involved. That principle is, as repeatedly declared, that as to those subjects which require a general system or uniformity of regulation, the power of Congress is exclusive; that, in other matters, admitting of diversity of treatment according to the special re-[fol. 215] quirements of local conditions, the states may act within their respective jurisdictions until Congress

sees fit to act; and that, when Congress does act, the exercise of its authority overrides all conflicting state legislation. \* \* \* It is this principle that is applied in holding that a state may not impose direct burdens upon interstate commerce, for this is to say that the states may not directly regulate or restrain that which, from its nature, should be under the control of the one authority, and be free from restriction save as it is governed by valid Federal rule. \* \* \*

\* \* \* The present question is simply one of reasonable charges. It is argued that the mere fact that interstate transportation is involved is sufficient to defeat the local regulation of rates, because, it is said, that it amounts to a regulation of interstate commerce. But this would not be deemed a sufficient ground for invalidating the local action without considering the nature of the regulation and the special subject to which it relates. \* \* \* The fundamental test, to which we have referred, must be applied; and the question is whether, with regard to rates, there is any inherent necessity for a single regulatory power over these numerous ferries across boundary streams; whether, in view of the character of the subject and the variety of regulation required, it is one which demands the exclusion of local authority. Upon this question we can entertain no doubt. It is true that in the case of a given ferry between two states there might be a difference in the charge for ferriage from one side, as compared with that for ferriage from the other. But [fol. 216] this does not alter the aspect of the subject. The question is still one with respect to a ferry, which necessarily implies transportation for a short distance, almost invariably between two points only, and unrelated to other transportation. It thus presents a situation essentially local, requiring regulation according to local conditions. It has never been supposed that because of the absence of Federal action the public interest was unprotected from extortion, and that in order to secure reasonable charges in a myriad of such different local instances, exhibiting an endless variety of circumstance, it would be necessary for Congress to act directly, or to establish for that purpose a Federal agency. The matter is illuminated by the consideration of this alternative, for the point of the con-

tention is that, there being no Federal regulation, the ferry rates are to be deemed free from all control. The practical advantages of having the matter dealt with by the states are obvious, and are illustrated by the practice of one hundred and twenty-five years. And in view of the character of the subject, we find no sound objection to its continuance. If Congress at any time undertakes to regulate such rates, its action will, of course, control."

And in 1920 this same basic principle was specifically held by the court to be applicable to regulation of rates for gas moving in interstate commerce and sold direct to consumers. *Pennsylvania Gas Company v. Public Service Commission*, 252 U. S. 23, 64 L. ed. 434 (1920), *supra*. In that case, the court, upholding state regulation concluded, p. 443:

[fol. 217] "The thing which the state Commission has undertaken to regulate, while part of an interstate transmission, is local in its nature, and pertains to the furnishing of natural gas to local consumers within the city of Jamestown, in the state of New York. . . .

"This local service is not of that character which requires general and uniform regulation of rates by congressional action, and which has always been held beyond the power of the states, although Congress has not legislated upon the subject. While the manner in which the business is conducted is part of interstate commerce, its regulation in the distribution of gas to the local consumers is required in the public interest, and has not been attempted under the superior authority of Congress."

It is interesting to note that, although in *East Ohio Gas Company v. Tax Commission of Ohio*, 283 U. S. 465, 75 L. ed. 1171, *supra*, the court disapproved the ruling of the *Pennsylvania* case that the sales direct to consumers were interstate sales, it carefully stated that the opinion in the *Pennsylvania* case was disapproved only "to the extent that it was in conflict" with the *East Ohio Gas* case decision holding the sales there involved to be intrastate in character.

In *Missouri v. Kansas Natural Gas Company*, 265 U. S. 298, 68 L. ed. 1027 (1924), the court, in denying state power to regulate sales of gas made for resale in interstate com-

merce and asserting such ruling was not inconsistent with its view in the *Pennsylvania* case and other decisions said, p. 1030:

[fol. 218] "There is nothing in *Pennsylvania Gas Co. v. Public Service Commission*, 252 U. S. 23, 64 L. ed. 434, P.U.R. 1920E, 18, 40 Sup. Ct. Rep. 279, inconsistent with this view. There the Gas Company, a Pennsylvania corporation, transmitted gas from Pennsylvania into New York, and sold it directly to the consumers. The service to the consumers, which was the thing for which the regulated charge was made, was essentially local, and the decision rests upon this feature. . . .

The commodity, after reaching the point of distribution in New York, was subdivided and sold at retail. The Landon Case, so far as this phase is concerned, differs only in the fact that the process of division and sale to consumers was carried on, not by the Supply Company, but by independent distributing companies.

"In both cases the things done were local, and were after the business in its essentially national aspect had come to an end. The distinction which constitutes the basis of the present decision is clearly recognized in the Landon Case. The business of supplying, on demand, local consumers, is a local business, even though the gas be brought from another state, and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance."

In *Cloverleaf Butter Co. v. Patterson*, 315 U. S. 148, 86 L. ed. 754 (1942), the subject of state power where interstate commerce is involved was discussed by Mr. [fol. 219] Justice Reed, who, citing many authorities, summarized as follows, pp. 762-3:

"It has long been recognized that in those fields of commerce where national uniformity is not essential, either the state or federal government may act. *Willson v. Black Bird Creek Marsh Co.* 2 Pet (US) 245, 7 L ed 412; *California v. Thompson*, 313 US 109, 114, 85 L ed 1219, 1221, 61 S Ct 930. Where this power to

legislate exists, it often happens that there is only a partial exercise of that power by the federal government. In such cases the state may legislate freely upon those phases of the commerce which are left unregulated by the nation. But where the United States exercises its power of legislation so as to conflict with a regulation of the state, either specifically or by implication, the state legislation becomes inoperative and the federal legislation exclusive in its application.

“When the prohibition of state action is not specific but inferable from the scope and purpose of the federal legislation, it must be clear that the federal provisions are inconsistent with those of the state to justify the thwarting of state regulation.”

In *Parker v. Brown*, 317 U. S. 341, 87 L. ed. 315 (1943); the court in upholding California regulatory legislation, thus stated upon this subject, pp. 332-3:

“When Congress has not exerted its power under the Commerce Clause, and state regulation of matters of local concern is so related to interstate commerce that it also operates as a regulation of that [fol. 220] commerce, the reconciliation of the power thus granted with that reserved to the state is to be attained by the accommodation of the competing demands of the state and national interests involved. . . .

“Such regulations by the state are to be sustained, not because they are ‘indirect’ rather than ‘direct,’ see *Di Santo v. Pennsylvania*, 273 US 34, 71 L. ed 524, 47 S Ct 267, *supra*; cf. *Wickard v. Filburn*, 317 US 111, ante, 122, 63 S Ct 82, *supra*, not because they control interstate activities in such a manner as only to affect the commerce rather than to command its operations. But they are to be upheld because upon a consideration of all the relevant facts and circumstances it appears that the matter is one which may appropriately be regulated in the interest of the safety, health and well-being of local communities, and which, because of its local character and the practical difficulties involved, may never be adequately dealt with by Congress. Because of its local character also there may be wide scope for local regulation without substantially impairing the national interest in the regulation of com-

merce by a single authority and without materially obstructing the free flow of commerce, which were the principal objects sought to be secured by the Commerce Clause."

The Commission believes there can be no real doubt as to the importance and predominance of the local interest in the regulatory problems involved. The state is vitally interested in the welfare of its industrial gas [fol. 221] users as well as that of its residential and commercial users. It is, in the opinion of this Commission, a specious argument to assert that because competition with other fuels may fix a maximum rate level for such sales, there is no public interest in regulation of sales to such class of consumers. Obviously matters of discrimination, adequacy of service and the level of rates for such service are all ones which warrant and call for the exercise of governmental regulatory power in respect of this class as well as other classes. The further fact that regulation of distribution of gas to the industrial class of consumers cannot, in the public interest, be divorced from that of distribution to other classes of consumers is amply shown by the facts in the record in this case. The importance of these factors has been pointed out in the opinions in *Re Service Gas Company*, 15 P. U. R. (N. S.) 202 (Penn. 1936) and *Re Louisiana-Nevada Transit Company*, 32 P. U. R. (N. S.) 219 (Ark. 1939), cases before state commissions; and factors affecting the problem and calling for careful further legislative consideration, both state and federal, are the subject of an extensive analysis by Mr. Justice Jackson in his concurring opinion in *Federal Power Commission v. Hope Natural Gas Company*, 320 U. S. 591, 88 L. ed. 333, 358-376 (1944), *supra*.

The Commission concludes that the distribution in Indiana by Panhandle of natural gas direct to consumers is subject to regulation by this Commission under the laws of this state.

[fol. 222]

Order

It is therefore ordered by Public Service Commission of Indiana that each and all of the objections made by Panhandle Eastern Pipe Line Company, the respondent in this cause, to any of the evidence offered in this cause (except

such objections as have heretofore been specifically and finally sustained by the Commission) shall be, and the same and each of them are hereby, overruled; and that all such evidence objected to shall be and is hereby received in evidence in this cause.

It is further ordered that said Panhandle Eastern Pipe Line Company shall, within twenty (20) days after receipt by it of a copy of this order, file with the Bureau of Tariffs of this Commission, in the form prescribed by this Commission, tariffs covering rates, rules and regulations appertaining to any and all sales of natural gas by it direct to ultimate consumers within the State of Indiana.

It is further ordered that said Panhandle Eastern Pipe Line Company shall, within sixty (60) days after receipt by it of a copy of this order, file with this Commission an annual report, in the prescribed form, for each of the Calendar years 1942, 1943 and 1944, and shall hereafter, when and as the same become due and so long as it continues to distribute gas direct to any consumer in Indiana, file with this Commission, on the prescribed form, an annual report for each succeeding year.

[fol. 223] It is further ordered that said Panhandle Eastern Pipe Line Company shall, within sixty (60) days after the receipt by it of a copy of this order, file with this Commission copies (certified by one of its fiscal officers as true copies) of (a) each and all statements appertaining to its property in such form as filed by it with the Federal Power Commission under and pursuant to Order No. 73 of said commission, adopted April 9, 1940, captioned "Order Requiring Submission of Supplemental Data in Connection with Gas Plant Instruction 2-D of the Uniform System of Accounts under the Natural Gas Act," and (b) each and all journal entries or proposed journal entries filed by it with said Federal Power Commission under and pursuant to the requirements of Subdivision B of Account No. 391 "Gas Plant Purchased" of the "Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act" prescribed by said commission, or of Subdivision B of Account No. 392 "Gas Plant Sold" of said Uniform Classification of Accounts.

It is further ordered that this Commission reserve for subsequent determination in this investigation the matter of what, if any, additional reports and information in respect of the property or operations of said Panhandle East-

ern Pipe Line Company this Commission should require to be filed with it by said company.

It is further ordered that this Commission reserve for [fol. 224] subsequent determination in this investigation the steps, if any, to be taken by this Commission if Panhandle shall, without first securing a Necessity Certificate under the provisions of Section 97A of the Public Service Commission Act, commence the supplying of natural gas direct to any consumer in Indiana who was not so served by it on February 26, 1945, and who is located in a rural area as defined in said act.

It is further ordered that the secretary of this Commission shall promptly after the entry of this order (a) mail, first class and registered mail, to said Panhandle Eastern Pipe Line Company at its principal office in Indiana, 601 Illinois Building, 17 West Market Street, Indianapolis 4, Indiana, and also at its principal executive office at 135 South LaSalle Street, Chicago 3, Illinois, copies of this order and of the rules and regulations of this Commission governing the construction and filing of schedules of rates, rules and regulations by public utilities other than inter-urban railways, (b) mail, as printed matter, postage prepaid and insured, to said Panhandle Eastern Pipe Line Company at its said office in Chicago, Illinois, six sets of the form of annual report prescribed by this Commission, and (c) mail, as first class mail and postage prepaid, to counsel of record for said Panhandle Eastern Pipe Line Company, and to each of the other parties to this proceeding and their respective counsel of record, copies of this order; and that said secretary shall forthwith thereafter file in this cause his certificate of such mailings.

[fol. 225] It is further ordered that said Panhandle Eastern Pipe Line Company shall, on or before twenty (20) days after the date of this order, pay into the Treasurer of the State of Indiana, through the Secretary of this Commission, the sum of \$23.59, said amount being the expenses incurred by this Commission in this investigation (including cost of publication of notices of hearing).

Yoder, Carlson and Cannon concur:

Approved: November 21, 1945.

[fol. 226] CONDENSED STATEMENT IN NARRATIVE FORM  
OF TESTIMONY OF O. W. MORTON

My name is O. W. Morton. I am an engineer by education and training and have been employed for a number of years by Panhandle Eastern Pipe Line Company as rate engineer. Natural gas supplied by Panhandle Eastern Pipe Line Company for resale to domestic, commercial and some industrial consumers is known as "firm load," while gas supplied either for resale to certain industrial consumers or direct to industrial consumers is known as "interruptible load." Practically all large industrial consumers are served on an interruptible basis. This is specified in Panhandle's contracts with certain distributing companies and large industrial consumers. During periods of extreme cold weather and sometimes in emergencies resulting from mechanical failure, it becomes necessary to cut off part of the interruptible load in order to insure delivery of the firm load. This is known in the industry as the "curtailment" procedure.

During the war period allocation of natural gas and curtailments were subject to the jurisdiction of the War Production Board. In general the carrying out of the procedure, subject to the general order and check of the Board, was left to the individual pipe line companies. Except for certain policies laid down by the Board, these problems were handled by the companies under the same procedure as in normal times. I was designated as the sole representative of Panhandle to handle such matters. My duties were to prepare schedules showing what amount [fol. 227] of "firm" gas could be obtained by curtailment of industrial loads; to prepare telegrams sent out in the curtailment procedure; to compile and graph statistics as to curtailment results in order to furnish information to the company and the Board; and in general to coordinate the operation of the pipe line with the Board's orders. This control ended in October, 1945.

The principal factor in determining the necessity for the extent of curtailment is the existing pressure and the trend at various points along the line. The next most important factor is temperature, both existing and predicted by weather reports. The "line pack," which is the quantity of gas in excess of normal quantities stored in the line at a given time, is also important, as is the mechanical condition

at each of the sixteen compressing stations along the line at intervals of seventy to eighty miles. In considering curtailment it is necessary to consider both the time of the week and the season. Less drastic curtailment is necessary if the emergency arises just before a week-end or near the end of the winter season. All of these conditions vary continually over the entire 1200 mile system.

It is necessary to have regular, accurate information at short intervals of all of these conditions throughout the entire system to consider and determine curtailment necessities. They could not possibly be determined without such information. While curtailments are usually uniform over [fol. 228] the system, conditions arise where it is necessary to curtail at one portion without curtailing others. Sometimes pressures are adequate in the west and central sections and low in the east, but there would be no benefit to the east in curtailing in other sections because the gas would not arrive in time. It takes about three days to travel from Amarillo, Texas to Detroit. Curtailment might become necessary in either Michigan or Illinois to relieve Indiana, and the reverse may be true. It is necessary to be able to curtail at any point in the line where it becomes necessary to carry out firm commitments in other portions.

Curtailment necessity may also be affected by knowledge of the situation of particular customers. No long range program can be laid down as the situation may change either way very quickly.

The mechanics of curtailment as handled by Panhandle are that the necessary information is first received by the dispatcher at the Kansas City office. A Curtailment Committee receives and considers the information and determines whether curtailment is necessary, the quantities necessary, and the sections in which it is required. The dispatcher then sends out the necessary telegrams to distributors and direct industrial consumers and compliance is checked by field men.

As to the necessity of curtailment, the problem is the same whether the gas is sold directly by Panhandle to an industrial consumer or to a local distributing company for resale to such consumer, and involves consideration [fol. 229] of the same elements of pressure, temperature, quantity of line storage, and mechanical conditions of equipment, time of year, time of week, and wind velocity.

The facilities by which the gas at Fortville is delivered to the DuPont Company for consumption and to two distributing companies at Fortville for resale are as follows: All three are served from a three-inch lateral, which takes off of the Greenfield four-inch lateral, which in turn takes off the main line of Panhandle Eastern. The three-inch lateral serving these towns at a point near the town border of Fortville branches into three measuring stations, one for each of the distributing companies and one for the DuPont plant. The gas goes through regulators and then through meters and is delivered at the outlet side of each meter. A reduction of pressure occurs as it goes through the regulator in the meter house. The three-inch line carries about eighty pounds and is reduced, in the case of the DuPont plant, to sixteen pounds before going through the meters, and probably approximately twenty pounds before it goes through the meters to the distributing companies. All of the facilities for the sales to DuPont and the two distributing companies at Fortville were in existence before the DuPont contract was entered into, with the exception of the lateral to Fortville and the facilities for delivery from that lateral.

[fol. 230]

PLAINTIFF'S EXHIBIT No. 3.

Panhandle Eastern Pipe Line Company

Statement of Gas Sold to Certain Utilities and Direct  
Industrial Customers in the State of Indiana  
October 1943 thru September 1945

## MCF

12 Months ended September 1944 Gas Utilities		Billed on Interruptible Industrial Rates	Billed on Other Rates	Total
Central Indiana Gas Co.	5,720,208	3,796,185	9,516,393	
Kokomo Gas & Fuel Co.	224,240	516,490	740,730	
Northern Indiana Public Serv. Co.		2,407,929	2,407,929	
Public Service Co. of Indiana	879,040	2,222,205	3,101,245	
Direct Industrial	760,827		760,827	
12 Months ended September 1945 Gas Utilities				
[fol. 231]				
Central Indiana Gas Co.	6,268,182	3,829,633	10,094,815	
Kokomo Gas & Fuel Co.	201,256	516,891	748,147	
Northern Indiana Public Serv. Co.		2,609,032	2,609,032	
Public Service Co. of Indiana	1,011,368	2,350,474	3,361,842	
Direct Industrial Rate Department, February 25, 1946	1,085,205		1,085,205	

## COMMISSION'S EXHIBIT No. 1.

STATE OF INDIANA,  
County of Randolph, ss:

PANHANDLE EASTERN PIPE LINE COMPANY, Plaintiff,

vs.

THE PUBLIC SERVICE COMMISSION OF INDIANA, LEROY E.  
YODER, LAWRENCE E. CARLSEN, and LAWRENCE W. CANNON,  
as members of the Public Service Commission of Indiana,  
Defendants

IN THE RANDOLPH CIRCUIT COURT

No. 5440

[fol. 232] WAIVER BY COMMISSION

Comes now the Public Service Commission of Indiana and shows to the court that it has been fully advised as to the evidence which will be introduced at the trial of the above action. Such evidence, in addition to the evidence offered before the Commission in the proceedings before it, is in the form of a deposition and in stipulations agreed upon by attorneys for this Commission and the Panhandle Eastern Pipe Line Co.

This Commission has considered such additional evidence and finds, that if it is believed to be materially different

from that offered upon the hearing before the Commission, that such evidence would not change the order of the Commission entered on November 21, 1945 which this suit is brought to set aside.

The Commission therefore being duly advised now waives the necessity of receiving and considering such evidence in accordance with the provisions of Sec. 8 of Chapter 169 of the Acts of 1929 (Burns' Ind. Stat. Anno. 1933, Sec. 54-436).

Ordered at Indianapolis, Indiana, February —, 1946.

Public Service Commission of Indiana, LeRoy E. Yoder, Chairman; Lawrence W. Cannon, [fol. 233] Lawrence E. Carlson. (Seal of The Public Service Commission, of Indiana.)

Samuel Busby, Secretary.

[fol. 234] IN THE RANDOLPH CIRCUIT COURT

Cause No. 5440.

PANHANDLE EASTERN PIPELINE COMPANY, Plaintiff

vs.

THE PUBLIC SERVICE COMMISSION OF INDIANA, et al., Defendants

#### SUPPLEMENTAL STIPULATION OF FACTS

It is hereby agreed by and between the parties hereto that this Stipulation when introduced in evidence in this cause shall have the same force and effect as though the matters hereinafter set forth had been proved by competent evidence introduced in said cause. However, the defendant Commission does not by this Stipulation intend to waive or waive any objections heretofore made to the filing of the supplemental complaint or the reopening of the case for further evidence or the relevancy of the order of the Commission made April 9, 1946.

1. On March 21, 1946 plaintiff in this cause filed with the defendant the Public Service Commission of Indiana in Cause No. 16741 pending before said Commission entitled "In the Matter of the Investigation by the Commission in Respect of the Distribution by Panhandle Eastern Pipe Line Company, as a Public Utility, of Natural Gas to

Consumers Within the State of Indiana," being the same proceeding as the one complained of in this action, a document entitled "Offer of Respondent to Furnish Information Designated by Commission Order Dated November 21, 1945, on Condition that the Same Be Accepted by the Commission as Information Only and That Said Order Dated November 21, 1945 Be So Modified as to State Unequivocally that It Involves No Assertion of Any Jurisdiction or Authority of the Commission to Regulate the Business of Respondent of Selling and Directly Delivering Natural Gas [fol. 235] Transported in Interstate Commerce to Industrial Consumers in the State of Indiana, and Seeks the Filing of the Reports and Documents Designated in Said Order for Information Purposes Only." A true and correct copy of said document, omitting formal parts, is contained in the document attached hereto, made a part hereof and marked "Exhibit A."

2. On April 9, 1946 the defendant herein, The Public Service Commission of Indiana, made and entered in said Cause No. 16741 an order entitled "First Supplemental Order." "Exhibit A" attached hereto and made a part hereof is a true and correct copy of said "First Supplemental Order."

George M. Beamer, Barnes, Hickman, Pantzer and Boyd, Attorneys for Plaintiff; James A. Emmert, Attorney General; Frank E. Coughlin, First Assistant Attorney General; Urban C. Stover, Deputy Attorney General; Wm. P. Evans, Attorneys for Intervenor.

## [fol. 236] EXHIBIT "A" TO STIPULATION OF FACTS

Before the Public Service Commission of Indiana

Cause No. 16741

In the Matter of the Investigation by the Commission in Respect of the Distribution by Panhandle Eastern Pipe Line Company, as a Public Utility, of Natural Gas to Consumers Within the State of Indiana

First Supplemental Order. Approved: April 9, 1946

## BY THE COMMISSION:

On November 21, 1945, this Commission entered its order (Original Order) in the above entitled cause wherein, among other things, it ordered the respondent herein, Panhandle Eastern Pipe Line Company (Panhandle), within times prescribed in such order, to file with the Bureau of Tariffs of the Commission tariffs covering rates, rules and regulations appertaining to any and all sales of natural gas by it direct to ultimate consumers within the State of Indiana, and to file with the Commission certain designated annual reports, and to file with the Commission certain information appertaining to the plant and property of Panhandle. Panhandle did not comply with any of the provisions of the Original Order, but on or about January 2, 1946 took an appeal (the Appeal) from said order to the Randolph Circuit Court. The Appeal was docketed as Cause No. 5440 in said court.

On March 21, 1946 respondent filed in this Cause No. 16741 a document captioned "Offer of Respondent to Furnish Information Designated by Commission Order Dated November 21, 1945, on Condition that the Same be Accepted by the Commission as Information only and that Said Order Dated November 21, 1945 be so modified as to State Unequivocally that it Involves no Assertion of any Jurisdiction or Authority of the Commission to Regulate the Business of Respondent of Selling and Directly Delivering Natural Gas Transported in Interstate Commerce to Industrial Consumers in the State of Indiana, and Seeks the Filing of the Reports and Documents Designated in Said

Order for Information Purposes Only" (Respondent's Offer). The content of Respondent's Offer is as follows:

"Comes now Panhandle Eastern Pipe Line Company and respectfully shows this Honorable Commission:

"1. That this Respondent has at all times throughout this proceeding asserted and insisted and continues to assert and insist, that it is engaged solely in [fol. 237] interstate commerce in the State of Indiana, that this Commission consequently has no jurisdiction of Respondent or its business, and that any statute of Indiana construed to purport to confer such jurisdiction as applied to Respondent and its business is void because in violation of Article I, Section 8(3) of the Constitution of the United States.

"2. That Respondent has asserted and continues to assert such position in the proceeding to set aside and vacate such order in Cause No. 5440 in the Randolph Circuit Court entitled *Panhandle Eastern Pipeline Company v. The Public Service Commission, et al.*, which cause has been heretofore tried in said Court and taken under advisement.

"3. That at the time said action was commenced Respondent in good faith understood and believed and still believes that said order dated November 21, 1945, constituted and constitutes an assertion of the right and authority to regulate the rates and service of Respondent in its business of selling and directly delivering natural gas transported in interstate commerce to certain industrial consumers as shown by the record in said cause which business Respondent contends is protected from such regulation by Article I, Section 8(3) of the Commerce Clause.

"4. That this Commission has now asserted by arguments and brief in said action in the Randolph Circuit Court that the papers and documents which Respondent is ordered to file by said order dated November 21, 1945 are sought by it for information purposes only and not as an assertion of jurisdiction to regulate Respondent's rates and service for direct sales and deliveries to industrial consumers within the State of Indiana.

"5. Respondent denies that the Commission is authorized by law to require the filing of the papers and documents ordered filed by said order dated November 21, 1945 for the reason that the same are not relevant to the exercise of any jurisdiction which the Commission possesses and no part of the business of Respondent is subject to its jurisdiction. However, Respondent has no desire to withhold from the Commission any matters designated in said order which are desired solely for information purposes, even though the preparation and filing of the same hereafter will be burdensome to Respondent, *provided* the filing of the same would in no way prejudice its position that the Commission has no jurisdiction or authority to regulate its said business in the event that any attempt to regulate the same should hereafter be made by the Commission. In view of the assertions heretofore [fol. 238] made in said order and now made by the Commission in arguments and briefs in said cause in the Randolph Circuit Court that the Commission has such regulatory jurisdiction, Respondent cannot be certain that it would not be prejudiced in said position if it should comply with the order as now entered unless the Commission by modification thereof specifically states in its order that said papers and documents are sought for information purposes only, and that said order is not to be construed as an assertion of any regulatory jurisdiction of Respondent or its business.

"6. Respondent therefore now offers to file with the Commission all papers and documents specified in the order dated November 21, 1945, *provided* the Commission desires the same for information purposes only and not as an assertion of regulatory jurisdiction of Respondent's business, and *provided* said order is so modified or such further order is entered by the Commission as to preclude the possibility of any contention hereafter that Respondent will be in any manner prejudiced in its right to contest the jurisdiction of the Commission to regulate its said business in the event the Commission shall hereafter assert the right, power, authority or jurisdiction to regulate the same.

"7. In the event that the order of the Commission dated November 21, 1945 is so modified or such further

order is entered as to protect Respondent from any prejudice in its right to contest hereafter the jurisdiction and authority of the Commission to regulate its said business in the event that the Commission shall hereafter assert the right, power, authority or jurisdiction to regulate the same, Respondent will furnish the information designated in said order dated November 21, 1945 within such reasonable time as shall be designated by the Commission and will dismiss said action now pending in the Randolph Circuit Court without prejudice and at its costs.

"8. While Respondent is willing to afford the Commission a full opportunity to consider and accept or reject the proposal herein made, attention is called to the fact that the time for filing Respondent's reply brief in said cause in the Randolph Circuit Court will expire on Thursday, March 28, 1946 and that said cause will then be ready for decision by that Court."

On or about March 28, 1946 Panhandle filed in the Appeal its application for leave to file a supplemental complaint relative to Respondent's Offer.

[fol. 239]—The Commission certainly has no desire that any of the parties to this cause, or the court before whom the Appeal is pending, or any consumer, public utility or other interested person, should be in any doubt as to the conclusions to which the Commission came in this cause as to its regulatory jurisdiction over sales direct to Indiana consumers of natural gas that has moved into the state in interstate commerce. The Commission thought that position was made as clear as language could make it by the findings and opinion in the Original Order. Though not required by statute to incorporate in an order either findings or opinion, the Commission did in the Original Order, because of the importance of this matter and to the end that the parties should be fully informed as to its conclusions, set forth in detail both its findings and its opinion as to its regulatory control. After an extended discussion of its views, the Commission said unequivocally therein (p. 82) that it concluded "that the distribution in Indiana by Panhandle of natural gas direct to consumers is subject to regulation by this Commission under the laws of this state." Those laws place on the Commission, as the state regulatory agency, the power and duty, whenever action is

necessary in the public interest, to make reasonable regulations of rates and service. This duty the Commission proposes to exercise when and as public interest requires action. The conclusion above quoted did and does express its position on this question.

The Commission has consistently reiterated this position in two other regulatory proceedings in each of which Panhandle was a party or had representatives present.

In *Panhandle Eastern Pipe Line Company, et al.*, Docket Nos. G-661 and G-688 before the Federal Power Commission, being proceedings involving the question whether Panhandle would be permitted by regulatory authorities to transport through its pipe line system large additional amounts of gas to be sold to a new industrial consumer, the Commission intervened in the interest of the consumers in the State of Indiana and opposed the use of the pipe line for such transportation on the ground that such system did not have sufficient capacity even to supply adequately existing consumers. In the hearing in those proceedings in January 1946, the federal commission called for, and the full federal commission listened to, arguments on the jurisdictional issue in which the Commission, as an intervenor, participated. In that argument the Commission stated:

“ \* \* \* The Indiana Commission believes that the Natural Gas Act has completely closed the gap in the regulation of gas moving in interstate commerce for public distribution.

“Assuming adequate state law, we believe that between the States and the federal agency the entire field has been covered. We have given much and careful consideration to the question of the division of federal and state regulatory powers in this interstate gas field, and it is our studied conviction that we have been [fol. 240] entrusted, under the powers remaining with us under our state statutes, with the full and complete regulation of all direct sales to consumers, residential, commercial or industrial, of natural gas moving in interstate commerce.

“This jurisdiction, we believe, extends both to the consumer rates and service of such sales, and includes the control and regulation by the State of those facilities of movement, metering and regulating which appertain *solely* to the direct customer service.

"On the other hand, we recognize fully your own jurisdiction and control over *the interstate transportation* of all such gas by the natural gas company, (1) until and including the sale in cases of sale for resale, and (2) up to and including the point where the gas is broken out of the interstate stream and placed in facilities used solely for the local sale, in cases of gas sold direct. For example, in a direct industrial sale by a pipe line company, such as the one in issue here, it is our view that the facilities beyond the valve take off in the transmission line are facilities of the local service and subject to state control; but that the facilities before such point, including the valve and other facilities used in the breaking out from the interstate stream of the gas to be sold to a consumer direct, are facilities subject to your jurisdiction and control.

"And we recognize, too, your full control and jurisdiction of the gas while in its interstate movement even though it is to be sold direct to a consumer; and your full right and power to determine the question of whether or not such facilities used or useful for that interstate transportation may in the public interest be used to move such gas to the point where our regulation begins, or must, because of prior rights of other consumers, inadequacy of facilities or other adequate causes, be used for other transportation.

"We believe this construction of the line of demarcation between state and federal powers is the one fixed by the Natural Gas Act. We believe the point of division of powers between you and us has been wisely so placed.

"We believe that under that division you have the full and complete authority in the instant case to determine whether or not this volume of gas which Panhandle Eastern Pipe Line Company proposes to sell direct can be brought to, or broken out at, the point where state regulation would pick up.

[fol. 241] "We are confident that in exercising that jurisdiction and determining the issues, you will give fair and full consideration to the rights and protection of all areas and all classes of consumers along this pipe line who are dependent upon its capacity for such gas as they need to meet their requirements for this essential public utility service. • • •"

The Commission also participated, on February 19 and 20, 1946 at the Chicago hearings in the general Natural Gas Investigation (Docket No. G-580), which is now being conducted by the Federal Power Commission. At that hearing, Panhandle had representatives present. The Commission there again stated its position as to its regulatory power over gas sold direct to Indiana consumers as follows:

“ . . . Adequate regulation of this supply, giving assurance that it will be available to consumers in the state, continuously and in adequate amounts, at fair and reasonable prices, and without unwarranted discriminations either between classes of users or those within a class, is of vital importance to the welfare of the state and its citizens. . . .

“ We believe that the transportation and sale of natural gas is a business affected with a public interest, that it is inherently and necessarily, if economic waste is to be avoided, generally monopolistic in character, and that full and adequate regulation thereof is essential if the public interest is to be protected. We believe this regulation and protection can best be afforded and local interests best dealt with through the existing policy of the Natural Gas Act of leaving to state regulatory authority the control over rates and service in cases of all direct consumer sales, and placing in the federal agency the full control over the interstate transportation of the gas and over its sale for resale. We believe the public interest can and will be best served through the cooperative efforts of these agencies as each functions within its own sphere. . . .

“ As we have before said, we believe that Congress has left with each state the control and regulation of direct sales to consumers within such state. We think, state law being adequate, this regulatory power exists in cases of all classes of direct service to consumers, residential, commercial and industrial, small or large. We believe the unification of regulation of all direct consumer sales in the state regulatory agency is a wise and sound one, and one that the legislative history of the Natural Gas Act shows clearly to have been the congressional intent. We think that this line of demarcation of regulatory control is clearly one permitted

by the federal constitution and that it should be fully preserved in any legislation amendatory to the act."

[fol. 242] Appearing as a participant in that hearing, the Commission further stated in answer to specific questions relative to direct consumer sales, as follows:

"In fact, our Commission has gone on record, as most of you probably well know, holding that we have legislative authority, which we propose to exercise governing all sales, irrespective of whether those sales are from a distributing utility or direct sales from a pipe line."

The position of the Commission, as determined from its investigation in this cause, was and is that it has jurisdiction over sales direct to consumers by Panhandle of natural gas that has moved into the state in interstate commerce; that Panhandle has the duty and obligation to file with the Commission, and keep on file, the tariffs, reports and accounting information required of public utilities by the statutes of the State of Indiana and the Commission's rules and regulations now in effect or from time to time promulgated; that the only lawful rates, rules and regulations for natural gas service by Panhandle direct to consumers in Indiana would be those filed by Panhandle with the Bureau of Tariffs of the Commission and in effect pursuant to the provisions of the Public Service Commission Act and the Commission's rules and regulations promulgated thereunder; contained in such tariffs, reports and other data for any and all lawful purposes necessary or advantageous in the performance by it of its duties and responsibilities as the state regulatory agency of public utility services; and that the Commission will, if, when and as the public interest requires, regulate rates and service of natural gas sales by Panhandle direct to Indiana consumers, and believes that it has authority so to do.

For some reason counsel for Panhandle, in their brief and in their oral argument in the Appeal, asserted that the Commission has no use for and does not need the information required to be filed by the Original Order for any purpose or use other than the regulation of sales to industrial consumers; and counsel have dogmatically asserted that "if no such right of regulation exists, the order made is

unlawful and should be vacated and set aside." (Bf., P. 9) Such statements are not correct factually, and in the opinion of the Commission, the conclusion of counsel is wholly erroneous. The actual experience of the Commission in connection with the two federal proceedings above referred to have amply demonstrated to it the need of such and other information for numerous purposes. Members of the Attorney General's staff both in their oral argument and in their subsequent brief in the Appeal demonstrated the fallacy of counsel's claim and pointed out some of these purposes. Counsel apparently now wants that demonstration translated into an abandonment of the Commission's expressed position of regulatory power. The Commission has been particularly concerned lest failure to reiterate its position might be taken as silent approval of their assertions. Such an assumption would be opposite to the fact, but the Commission has concluded it should affirmatively point this out in acting on Respondent's Offer.

[fol. 243] The Commission seeks the information directed to be filed by the Original Order for any and all uses to which it may be put by the Commission in the exercise of its statutory functions and the performance of its duties. Its use will not be limited to rate and service regulation of direct sales to Indiana consumers, but this broader use will not exclude the use for rate and service regulation of such sales. An example of this broader use appears in connection with the two proceedings above referred to. Certain of the information needed for participation in those proceedings, and for determination of the necessity of such participation, would have been available if the Original Order had been complied with. Experience in those proceedings also has shown a necessity for broadening the information called for in annual or periodic reports. The importance to the public of a continuous check on natural gas pipe line capacity and use has been strongly impressed on the Commission by the experiences of the past winter. Action by regulatory agency in advance of an actual break-down of service is a greater aid to the public than remedial action after break-down. Conditions arising this winter have spot lighted the essentialness of vigilance by the state regulatory agency if an adequate supply of gas is to be had for Indiana consumers. Severe, and what the Commission believes to have probably been arbitrary and discriminatory, curtailments in the gas supply to Indiana industrial consumers using gas

from the Panhandle system, were made by Panhandle during this past winter. The complaints to the Commission by such curtailed consumers, and their reports as to the affect of the curtailments on the production operations and employment in their establishments, convinced the Commission of the seriousness of the situation from the public standpoint. It actively sought and obtained assistance from the Federal Power Commission in respect of lessening these curtailments. During the same period facts came to light which disclosed that Panhandle was attempting to take on an additional large industrial load on its system. The supplying of such load would have seriously impaired the existing service to industrial consumers in Indiana. On behalf of the consuming public, the Commission appeared as intervenors in the investigation of the Federal Power Commission of this matter (Dockets No. G-661 and No. G-688), but most of the factual information had to be developed from examinations and studies of transmission capacities and loads which was in the files of the Federal Power Commission, and this handicapped the Commission in discovering the problem and dealing with it.

The position of the Commission is that its functions include, when and as necessary in the public interest, the regulation of rates and service in cases of sales directly to Indiana consumers. There are many purposes and uses, in the exercise of the regulatory and other duties placed upon the Commission by law, for which the Commission shall undoubtedly make use of the data which are required to be supplied now and from time to time by Panhandle under the Indiana statute and the Original Order. Some of those uses were pointed out by the Attorney General both in his oral argument and in the brief subsequently filed. It [fol. 244] is not necessary to repeat or expand the list. The uses which will be made of the information supplied will be all such as the public interest require. Certainly without the information the Commission is and will be handicapped in the exercise of many of its regulatory functions and the public, in whose interest the Commission functions, is injured thereby.

The Commission desires to add a word as to the reservation in the Original Order relative to further action by the Commission if Panhandle undertook to sell gas direct to DuPont without complying with Section 97A of the Public Service Commission Act. The issue in such

supplemental investigation would involve the provisions of Section 97A of the Act, and issue additional to those dealt with in the Original Order. Panhandle had not at the time of the hearings or the order commenced any service to DuPont. In such a situation, the Commission had no power to order anything in respect of DuPont at that time. The Commission was not called upon to assume that, in the light of the views expressed in the Original Order, Panhandle would ignore the state and commence direct service to DuPont merely upon its own ideas of the scope of Section 97A. Panhandle could have submitted that question to the Commission for determination before it commenced the service, and it can still do so if it sees fit. In any such petition, Panhandle can assert a lack of jurisdiction, and any order made, if not acceptable to Panhandle, is appealable to the Courts. Such procedure is not unknown to Panhandle. Panhandle took exactly that kind of a course in an application to the Federal Power Commission which is docketed as Docket No. G-693 and in which docket the Commission was a party intervenor. But with the State of Indiana, Panhandle saw fit to ignore the statutory provisions, and saw fit to commence the service and then advise the Commission that it had done so. In that situation, Panhandle has, with its eyes open, assumed the risks of the course it selected. There is nothing in the Original Order that in any way creates or increases that risk. If, however, Panhandle does not see fit promptly to file a petition for a Necessity Certificate under Section 97A, the Commission proposes to proceed at the earliest date consistent with its other duties and the demands made by them upon it and its staff, with an investigation of the status of Panhandle's DuPont service in the light of Section 97A.

It is therefore ordered by the Public Service Commission of Indiana that the request contained in Respondent's Offer that the Commission modify, change or limit the scope of the Original Order be and the same is hereby denied; that Respondent's Offer be, and the same is hereby, rejected by the Commission; that a conditional filing, as proposed by Panhandle in Respondent's Offer, of the tariffs of rates, rules and regulations, the annual reports and the accounting information, or any of them, required to be filed by Panhandle by and under the Original Order will not constitute compliance with the Original Order, and that

the tariffs of rates, rules and regulations, the annual reports and the accounting information, when filed, shall be deemed to be on file for, and to be available for use by the Commission for, all purposes and uses required or permitted by the provisions of the Public Service Commission Act and the rules and regulations of the Commission promulgated thereunder, including, but without limitation, the use thereof in and in connection with the regulation of rates and service appertaining to the supplying [fol. 245] of natural gas by Panhandle direct to consumers within the State of Indiana.

It is further ordered that the Secretary of the Commission shall promptly after the entry of this first supplemental order (a) mail, first class and registered mail, to Panhandle at its principal office in Indiana, 601 Illinois Building, 17 West Market Street, Indianapolis 4, Indiana, and also at its principal executive office at 135 South LaSalle Street, Chicago 3, Illinois, copies of this first supplemental order, and (b) mail, as first class mail and postage prepaid, to counsel of record for Panhandle, and to each of the other parties to this proceeding and their respective counsel of record, and to the honorable judge of the Randolph Circuit Court at Winchester, Indiana, copies of this first supplemental order; and that said Secretary shall forthwith thereafter file in this cause his certificate of such mailings.

Yodder, Carlson, and Cannon concur.

Approved: April 9, 1946.

I hereby certify that the above is a true and correct copy of order as approved.

— — —, Secretary to Commission.

[fol. 246] And afterwards, to-wit: On the 22nd day of July, 1946, the same being the 48th judicial day of the May Term, 1946 of the Supreme Court of Indiana, the following proceeding was had.

Comes now the appellant by counsel and petitions the court to bind the transcript of this cause, in three volumes, with proof of service which petition is in the words and figures following to-wit: (H. I.).

And the court being advised in the premises, grants said petition as prayed.

And afterwards, to-wit: On the 3rd day of August, 1946, the same being the 59th judicial day of the May Term, 1946, the following proceeding was had.

Comes now the parties by counsels and files the transcript in this cause, "Record, 3 Vol. Assignment of Errors, two sets. Petition of certain appellants to adopt statement of record in brief filed by Public Service Commission. Petition granted and cause submitted under Rule 2-14.

[fol. 247] IN THE SUPREME COURT OF INDIANA

No. 28225

THE PUBLIC SERVICE COMMISSION OF INDIANA, etc., et al.,  
Appellants,

vs.

PANHANDLE EASTERN PIPE LINE COMPANY, Appellee

Appeal from the Randolph Circuit Court

ASSIGNMENT OF ERRORS—Filed August 3, 1946

The appellants in the above entitled cause, the Public Service Commission of Indiana, LeRoy E. Yoder, Lawrence E. Carlsen and Lawrence W. Cannon, as members of the Public Service Commission of Indiana, for their separate and several assignment of errors in said cause, each separately and severally says there is manifest error in the judgment and proceedings, prejudicial to said appellants and each of them in the cause in that:

1. The court erred in overruling the separate and several motion- for new trial filed by each of said appellants.
2. The court erred in receiving and considering the supplemental complaint and order of the Commission entered after this case was filed by the appellee and tried.

Wherefore, the appellants pray that the judgment in [fol. 248] this cause be reversed.

Respectfully submitted, (Signed) James A. Emmert,  
Attorney General of Indiana. Frank E. Coughlin,  
First Assistant Attorney General. Urban C.  
Stover, Deputy Attorney General. Karl J. Stipher,  
Deputy Attorney General.

[File endorsement omitted.]

[fol. 249] IN THE SUPREME COURT OF INDIANA

No. 28225

THE PUBLIC SERVICE COMMISSION OF INDIANA, etc., et al.,  
Appellants,

vs.

PANHANDLE EASTERN PIPE LINE COMPANY, Appellee

Appeal from the Randolph Circuit Court

ASSIGNMENT OF ERRORS—Filed August 3, 1946

The appellants in the above entitled cause, Indiana Gas & Water Company, Inc., Central Indiana Gas Company, Northern Indiana Public Service Company, Kokomo Gas & Fuel Company, Southern Indiana Gas & Electric Company and Greenfield Gas Company, Inc., for their separate and several assignment of errors in said cause, each separately and severally says there is manifest error in the judgment and proceedings, prejudicial to said appellants and each of them, in the cause in that:

1. The Court erred in overruling the separate and several motion for new trial filed by each of said appellants.

Respectfully submitted, Indiana Gas & Water Company, Inc., (Signed) William P. Evans, Edmond [fol. 250] W. Hebel, Its Attorneys. Central Indiana Gas Company, (Signed) Robert R. Batton, Carl E. Hartley, Its Attorneys. Northern Indiana Public Service Company, (Signed) John C. Lawyer, R. Stanley Anderson, Its Attorneys. Kokomo Gas

& Fuel Company, (Signed) John E. Fell, Its Attorney. Southern Indiana Gas & Electric Company, (Signed) Edmund F. Ortmeier. Greenfield Gas Company, Inc., (Signed) William A. McClellan, Its Attorney.

[File endorsement omitted.]

[fol. 251]. And afterwards, to wit: On the 7th day of August, 1946, the same being the 62nd judicial day of the May Term, 1946, the following proceeding was had in this cause.

Comes now the National Association of Railroad & Utilities Commission and files a petition to participate as Amicus Curiae, which petition is in the words and figures following, to-wit: (H. I.).

And afterwards, to-wit: On the 9th day of August, 1946, the same being 64th judicial day of the May Term, 1946 the following proceeding was had in said cause.

Comes now the parties by counsel and the court being advised in the premises grants the petition of National Association of Railroad & Utilities Commission to file as Amicus Curiae.

And afterwards, to-wit: On the 19th day of August, 1946, the same being the 72nd judicial day of the May Term, 1946, the following further proceedings were had in said cause.

Comes now the Indiana Gas & Water Co., Inc., et al., and files a separate brief (9) with proof of service and a request for oral argument. (H. I.).

And afterwards to-wit, on the 30th day of August, 1946, the same being the 82nd judicial day of the May Term, 1946, [fol. 252] the following proceeding was had in this cause.

Comes now the Public Service Commission by counsel and files their briefs (9) with proof of service. (H. I.)

And afterwards, to-wit: On the 3rd day of September, 1946 the same being the 85th judicial day of the May Term, 1946, the following proceeding was had in said appeal.

Comes now the National Association of Railroad & Utilities, and files their briefs (9) amicus curia- with proof of service. (H. I.).

And afterwards, to-wit: On the 24th day of September, 1946, the same being the 103rd judicial day of the May Term, 1946, the following proceeding was had in said appeal.

Comes now the appellees by counsel and files a petition for time with proof of service, which petition is in the words and figures following, to-wit: (H. I.). And the Court being fully advised in the premises, grants said petition, and time is extended to and including October 10, 1946.

And afterwards, to-wit: On the 5th day of October, 1946, the same being the 113th judicial day of the May Term, 1946, the following proceedings were had in said cause.

[fol. 253] Comes now the appellee by counsel and files briefs (9) and proof of service, which brief is in the words and figures following, to-wit: (H. I.).

And afterwards, to-wit: On the 10th day of October 1946, the same being the 117th day of the May Term, 1946, the following further proceedings were had in said cause.

Come now the parties by counsel and the court, being advised in the premises, sets the oral argument in the above entitled appeal for November 19, 1946 at ten o'clock A. M., with two hours on each side.

And afterwards, to-wit: On the 19th day of October 1946, the same being the 125th day of the May Term, 1946, the following further proceedings were had in said cause.

Comes now the appellants, Indiana Gas & Water Company, Inc., et al. and files their Reply Briefs (9) and proof of service. (H. I.).

And afterwards, to-wit: on the 19th day of October 1946, the same being the 125th day of the May Term, 1946, the following further proceedings were had in said cause.

Comes now the appellants, Public Service Commission and files reply brief (9) and proof of service. (H. I.).

[fol. 254] And afterwards, to-wit: On the 2nd day of November 1946, the same being the 137th day of the May term the following proceeding was had in said cause.

Comes now the appellees and files additional authorities (10) with proof of service.

And afterwards, to-wit: On the 19th day of November 1946, the same being the 151st day of the May Term, 1946, the following proceedings were had in said cause.

Comes now the appellants by counsel and files notes on the oral argument which notes are in the words and figures following to-wit: (H. I.).

And afterwards, to-wit: On the 20th day of November 1946, the same being the 152nd day of the May Term, 1946, the following proceedings were had in said cause.

Comes now the appellees by counsel and files notes

on the oral argument which notes are in the words and figures following, to-wit: (H. I.).

And afterwards, to-wit: On the 5th day of February 1947, the same being the 63rd day of the November Term, 1946, the following proceedings were had in said cause.

[fol. 255] Come now the parties by counsel and the court, being advised in the premises, reverses the judgment of the court below with the following opinion pronounced by Young, J.

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IN THE SUPREME COURT OF INDIANA

No. 28225

THE PUBLIC SERVICE COMMISSION OF INDIANA, etc., et al.,  
Appellant,

vs.

PANHANDLE EASTERN PIPE LINE COMPANY, Appellee

Appeal from the Randolph Circuit Court

OPINION—Filed February 5, 1947

[fol. 256] In this case we have to do with the right of the State of Indiana to regulate service and fix rates upon deliveries of natural gas from an interstate pipe line direct to large industrial consumers within the State.

Appellee owns a large pipe line, through which it transports natural gas from Texas and Kansas into and across intervening states, including Indiana, to Ohio and Michigan. At different points along this line, gas is diverted into branch or lateral lines, smaller in size and at lower pressure, to be delivered to distribution systems owned and operated by various municipalities and public utility corporations and directly to selected, large industrial consumers of gas within practical distance of its through line.

When these proceedings started appellee furnished gas in Indiana to 10 utilities, including the corporate appellants, and four municipalities who, in turn, distributed such gas to 112,000 residential, industrial and commercial consumers in Indiana. One of these laterals takes off from the main line near Winchester, Indiana, and at the end of this lateral there are two branches, one leading to a meter house,

through which deliveries are made to Indiana-Ohio Public Service Company, which owns a distribution system serving Winchester and nearby territory. The other branch leads to another meter house, through which gas is delivered direct to the Anchor-Hocking Glass Corporation for its own consumption. Service to Anchor-Hocking is, and service to other large industrial consumers will be, under special, privately negotiated contracts, each upon terms agreed [fol. 257] upon for its particular case.

Appellee's gas enters Indiana at a pressure of about 250 pounds per square inch in 22 inch mains. After reaching Indiana the pressure is reduced to approximately 200 pounds per square inch in 15 inch mains. When the Winchester lateral leaves the main line, pressure is reduced to 80 or 100 pounds per square inch and there is no provision whereby it may ever be returned to the main line. Thereby it is segregated from the gas flowing interstate in the main line but the continuity of flow from the source to the meter houses is not interrupted. At the meter houses referred to pressure is again reduced and some deliveries are made to Anchor-Hocking at 40 pounds per square inch and some at 10 pounds per square inch. Deliveries are made to the Indiana-Ohio Public Service Company at 9 to 25 pounds per square inch. In both cases all facilities up to the pipe on the outlet side of the meter houses are owned and operated by appellee. The Winchester lateral is located in part on public highways in Randolph County pursuant to authority granted by the Board of Commissioners of that county to a predecessor of appellee which built the line. For what significance it may have, we know judicially that appellee's main line and other laterals could not cross the state and branch out into areas served without at least crossing highways and probably otherwise using same pursuant to arrangement with local Governmental units.

[fol. 258] The quantity sold to Anchor-Hocking is many times the quantity sold to the Indian-Ohio Company. Anchor-Hocking was the only industrial consumer in Indiana served direct by the appellee at the time of the commencement of these proceedings. Subsequently, however, service direct to a DuPont plant, near Fortville, Indiana, was undertaken under contract and appellee had adopted a policy of furnishing gas direct to selected large industrial consumers in Indiana, as it is doing in other

states. Before appellee began serving Anchor-Hocking, Anchor-Hocking had been buying its gas from a local distributing utility which, in turn, had purchased it from appellee or its predecessor.

It appears that in like manner, as appellee begins service direct to other large industrial consumers, it will, in most, if not all, instances supplant service by local public utility companies. These local distribution utilities have expressed alarm that taking away their large customers, thereby decimating the volume of their sales, will cripple their ability to serve domestic and small commercial and industrial consumers at fair rates.

In this situation, the Public Service Commission of Indiana instituted an investigation of the affairs of the appellee so far as same relate to sales of gas under contract direct to Anchor-Hocking Glass Corporation or any other industrial consumer or consumers of natural gas within the State of Indiana. (Sec. 54-1f2 Burns' 1933.) The corporate appellants intervened. This investigation resulted in an order on November 21, 1945, by the Public [fol. 259] Service Commission of Indiana, requiring appellee to file with the Commission its tariffs covering rates, rules and regulations pertaining to any and all sales of natural gas by appellee direct to ultimate consumers within the State of Indiana, and to file annual reports on forms prescribed by the Commission, so long as it continues to distribute gas direct to any consumer in Indiana, and to file certain other relevant reports and data. In the original order, the Commission concluded and said "that the distribution in Indiana of natural gas direct to consumers is subject to regulation by this Commission under the laws of this state." It was contended by appellee that the Commission's order constituted an assumption of jurisdiction to regulate appellee's rates and service direct to consumers in Indiana, and that such regulation could not be accomplished without violation of the Commerce Clause of the Federal Constitution. Accordingly appellee filed a statutory action to secure a judicial review of said order and to have said order set aside and its enforcement enjoined.

In the course of the hearing in the trial court, the appellant Commission contended that the action was premature because the order complained of merely required information which it was entitled to have, regardless of its

power, or lack of power, to fix rates or otherwise regulate sales of gas by appellee directly to large industries for use by them in Indiana, and that no action will lie to test such power until the Commission attempts to exercise same. Acting upon this contention of counsel for the appellant [fol. 260] Commission, appellee offered, in writing, to file with the Commission "all papers and documents specified in the order dated November 21, 1945, provided the Commission desires the same for information purposes only and not as an assertion of the regulatory jurisdiction of respondent's business, and *provided* said order is so modified or such further order is entered by the Commission as to preclude the possibility of any contention hereafter that Respondent will be in any manner prejudiced in its right to contest the jurisdiction of the Commission to regulate its said business in the event the Commission shall hereafter assert the right, power, authority or jurisdiction to regulate the same."

The Commission declined to accept appellee's filing of the required papers upon the conditions named in the appellee's offer and, in doing so, the appellant Commission made a supplemental order in which it asserted categorically that the tariffs, rates, rules and regulations, the annual reports and the accounting information, required by the original order when filed, shall be deemed to be on file and be available, among other things, for use by the Commission "in connection with the regulation of rates and service appertaining to the supplying of natural gas by Panhandle direct to consumers within the State of Indiana." Notwithstanding the language of the original and supplemental orders, the Commission continues to take the position that its power to regulate appellee's sales and deliveries of gas direct to large consumers in Indiana is not involved in this proceeding.

[fol. 261] With this contention we cannot agree.

On authority of *Public Utilities Commission v. United Fuel Gas Co.* (1943), 317 U. S. 456, 459, 465, 468, 87 L. Ed. 396, 398, 401-403, we hold that the orders of the Commission, in this case, constitute an unequivocal assertion of power and jurisdiction to regulate and fix rates upon sales of natural gas from appellee's interstate pipe line direct to large industrial consumers of gas in Indiana, and that they were sufficient to present to the trial court and to this court the question of the jurisdiction and power of

appellant Commission to fix rates for such sales and service and to make regulations with reference to same.

The trial court reached the conclusion that the delivery of natural gas by appellee direct to industrial consumers connected with its lines constituted interstate commerce and that the orders of the Public Service Commission of Indiana under attack violated the commerce clause of the Federal Constitution, and it vacated and set aside the orders of the Public Service Commission of Indiana complained of and enjoined the Commission and the members thereof from enforcing said orders or any paragraph thereof. The Public Service Commission of Indiana, and the individual members thereof, filed a motion for a new trial and same was overruled. Likewise the corporate appellants filed motions for a new trial, which were overruled and appeals were taken to this court.

In determining whether or not the Indiana Commission [fol. 262] has jurisdiction to regulate and fix rates for deliveries of gas by appellee, direct to large industrial consumers in Indiana, we should first consider whether such deliveries constitute intrastate commerce. If they do then the state may regulate and what the Indiana Commission has done does not violate the commerce clause of the Federal Constitution. But if they constitute interstate commerce that does not necessarily mean the state may not, under any circumstances, intervene.

Natural gas is a commodity which may be transported as an article of commerce. Its transmission from one state to another constitutes interstate commerce. *State ex rel. Corwin v. The Indiana and Ohio Oil, Gas, and Mining Co.* (1889), 120 Ind. 575, 577, 579, 22 N. E. 778; *Pennsylvania v. West Virginia* (1923), 262 U. S. 553, 596, 67 L. Ed. 1117, 1132; *Missouri ex rel. Barrett v. Kansas Natural Gas Co.* (1924), 265 U. S. 298, 307, 68 L. Ed. 1027; *Public Utilities Commission v. Landon* (1919), 249 U. S. 236, 245, 63 L. Ed. 577.

Appellee contends that under the rule just stated where gas flows continuously without interruption from out-state gas fields direct to in-state consumers, the deliveries to in-state consumers constitute interstate commerce. We recognize that this is a sound conclusion, but it is contended by appellants that there is interruption in the flow of gas to Anchor-Hocking and that the sales and deliveries to Anchor-Hocking are, and that in the future sales to other

large industrial consumers will be, intrastate in nature. [fol. 263] This is predicated largely upon the fact that gas is diverted at low pressures from the main line high-pressure supply into lateral and branch lines in such manner that the diverted gas cannot be restored to the high pressure main line flow. They say that the continuity of movement is broken; that the gas is segregated for a particular intrastate use or uses and they apply to the "broken package" rule to make such sales to Anchor-Hocking intrastate in character. There are cases which apply the "broken package" doctrine to situations not entirely dissimilar and which lend support to appellants' contention. *East Ohio Gas Co. v. Tax Commission* (1931), 283 U. S. 465, 75 L. Ed. 1171, 1175; *Southern Natural Gas Corp. v. Alabama* (1937), 301 U. S. 148, 81 L. Ed. 970, 974-5; *Mississippi River Fuel Corp. v. Smith* (Mo. 1942), 164 S. W. (2d) 370, 375.

However, it is now well established that sales and deliveries from interstate pipe lines to local utilities for resale are interstate transactions. *Natural Gas Act*, § 15 U. S. C. A., Sec. 717 (b); *Missouri ex rel. Barrett v. Kansas Natural Gas Co.*, *supra*; *Public Utilities Commission v. Landon*, *supra*; *State Corporation Commission v. Wichita Gas Co.* (1934), 290 U. S. 561, 563, 78 L. Ed. 500, 502. Such sales and deliveries are, so far as segregation and reduced pressures are concerned, almost exactly like sales direct to large industrial consumers. For example, gas for Anchor-Hocking and gas for the Indiana-Ohio Company, the distributing utility serving the City of Winchester, and other towns thereabout, leave the main line through the same lateral and at identical pressures. In fact [fol. 264] they are inseparably a part of the same flow. This common flow continues until the lateral divides close to points of delivery to Anchor-Hocking and the Indiana-Ohio Company. As has already been shown, the pressures there, while not exactly the same to each, are substantially the same. If the segregation and reduced pressure for delivery to the Indiana-Ohio Company do not make such transactions intrastate commerce under the "broken package" theory, we cannot very consistently apply the "broken package" theory to almost identical deliveries to Anchor-Hocking.

But we need not decide whether the Anchor-Hocking business and prospective sales direct to other large indus-

trial consumers are interstate or intrastate by mechanical standards. Even if they are interstate they still may be subject to state regulation under some circumstances. It has long been established that the power of Congress over interstate commerce is not exclusive. If the Federal Government has not elected to exercise its power under the commerce clause, and if the transaction is not of such nature as to require uniform regulation on a national basis, and if it is so local in its nature and implications that local needs outweigh national interest then, even though interstate, according to mechanical tests, the state may intervene and regulate. *Minnesota Rate Cases* (1913), 230 U. S. 352, 399, 402, 57 L. Ed. 1511, 1541, 1542; *South Carolina State Highway Dept. v. Barnwell Bros.* (1938), 303 U. S. 177, 185, 82 L. Ed. 734; *Parker v. Brown* (1943), 317 U. S. [fol. 265] 341, 359-363, 87 L. Ed. 315; *Cloverleaf Butter Co. v. Patterson* (1942), 315 U. S. 148, 155, 86 L. Ed. 754; *Southern Pacific Co. v. State of Arizona* (1945), 325 U. S. 761, 766, 89 L. Ed. 1915; *Kelly v. Washington* (1937), 302 U. S. 1, 10, 82 L. Ed. 3.

In the *Minnesota Rate Cases*, *supra*, the question of the conflicting claims of the State and the Federal Government, with reference to interstate commerce regulations, arose. Mr. Justice Hughes, in commenting upon this conflict, said, on p. 399:

" . . . It has repeatedly been declared by this court that as to those subjects which require a general system or uniformity of regulation, the power of Congress is exclusive. In other matters, admitting of diversity of treatment according to the special requirements of local conditions, the states may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting state legislation." (Citing many authorities.)

Following this language, the opinion states several things affecting interstate commerce (not involved in the case before us) which the states have no right to do and then on page 402 the court used the following language:

"But with these limitations there necessarily remains to the states until Congress acts, a wide range [fol. 266] for the permissible exercise of power ap-

appropriate to their territorial jurisdiction although interstate commerce may be affected. It extends to those matters of a local nature as to which it is impossible to derive from the constitutional grant an intention that they should go uncontrolled pending Federal intervention. Thus, there are certain subjects having the most obvious and direct relation to interstate commerce, which nevertheless, with the acquiescence of Congress, have been controlled by state legislation from the foundation of the government because of the necessity that they should not remain unregulated, and that their regulation should be adapted to varying local exigencies; hence, the absence of regulation by Congress in such matters has not imported that there should be no restriction, but rather that the states should continue to supply the needed rules until Congress should decide to supersede them. . . . Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the state appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to [fol. 267] interstate commerce as to be within the reach of the Federal Power. . . .

In *Cloverleaf-Butter Co. v. Patterson*, *supra*, the right of the state to act with reference to interstate commerce is stated in the following words, beginning near the bottom of page 155 of 315 U. S.:

" . . . It has long been recognized that in those fields of commerce where national uniformity is not essential, either the state or federal government may act. *Willson v. Black Bird Creek Marsh Co.* 2 Pet. (US) 245, 7 L. ed. 412; *California v. Thompson*, 313 US 109, 114, 85 L. ed. 1219, 1221, 61 S Ct. 930. Where this power to legislate exists, it often happens that there is only a partial exercise of that power by the federal government. In such cases the state may legislate freely upon those phases of the commerce which are left unregulated by the nation. But where the United States exercises its power of legislation so as to conflict with a regulation of the state, either specifically or by implication, the state legislation be-

comes inoperative and the federal legislation exclusive in its application."

These cases, and the language which we have quoted from them establish that a state may interfere with interstate commerce under some circumstances and indicate those circumstances to be much as we have set them forth above.

The cases cited show a substantial abandonment of the [fol. 268] mechanical test of when and where interstate commerce ends and intrastate commerce begins and test the right of states to regulate and tax local phases of interstate commerce by recognizing conflicting state and federal interests and attempting to compose and accommodate and adjust the competing demands that are inherent in our dual form of government. *United States v. South Eastern Underwriters Association* (1944), 322 U. S. 533, 546, 547, 88 L. Ed. 1440. And the trend of the later cases is as stated in *Prudential v. Benjamin* (1946) 90 L. Ed. (Adv. Op.) 1023, 1030, 1031. In that case the broadening of the field of federal intervention in interstate commerce was discussed and then the following language was used at page 1030:

" . . . the tendency also has run toward sustaining state regulatory and taxing measures formerly regarded as inconsonant with Congress' unexercised power over commerce, and to doing so by a new, or renewed, emphasis on facts and practical considerations rather than dogmatic logistic. . . ."

Under the language and holdings of the cases above cited and quoted, the circumstances of the case before us seem to permit state regulations of sales direct from interstate pipe lines to Indiana consumers. In reaching this conclusion we find the first prerequisite of state control, i. e. that the federal government has not undertaken to regulate such business. No regulation of interstate natural gas pipe lines and distribution by and through same was attempted [fol. 269] by the federal government until Congress passed the Natural Act in 1938. 15 U. S. C. A. Sec. 717, et seq. By the Natural Gas Act, Sec. 1 (b), Congress limited the application of the Act by the following language:

"The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce,

to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas." (Our italics.)

It will be seen that the only sales of natural gas subject to the statute are those for resale. Specifically it does not apply to any other sales, which definitely excludes from its operation direct sales to large industries for their own consumption. *Panhandle Eastern Pipe Line Co. v. Federal Power Commission* (1945), 324 U. S. 635, 646, 89 L. Ed. 1241; *Colorado Interstate Gas Co. v. Federal Power Commission* (1945) 324 U. S. 581, 588, 89 L. Ed. 1206.

The statute followed the decided cases. The Supreme Court had held that states could not regulate the sale of natural gas from interstate pipe lines to local utilities for resale and distribution through local distribution systems. [fol. 270] *Missouri ex rel. Barrett v. Kansas Natural Gas Co., supra*; *State Corp. Commission v. Wichita Gas Co., supra*.

Likewise, it had been established that the states did have jurisdiction over sales by local distributing companies, even though the gas had come directly from interstate pipe lines. *Public Utilities Comm. v. Landon, supra*; *Pennsylvania Gas Co. v. Public Service Commission* (1919), 252 U. S. 23, 64 L. Ed. 434.

The statute, therefore, served to affirm and implement the rights of control, which the cases had already established. That this was the intent of Congress is shown by the legislative history of the statute. *Public Utilities Commission of Ohio v. United Fuel Gas Co., supra*; *Illinois Natural Gas Co. v. Central Illinois Public Service Co.* (1942), 314 U. S. 498, 506, 507, 86 L. Ed. 371; *Colorado Interstate Gas Co. v. Federal Power Commission* (1944), 324 U. S. 581, 600, 601, 89 L. Ed. 1206; *Federal Power Commission v. Hope Natural Gas Co.* (1943), 320 U. S. 591, 609, 610, 88 L. Ed. 333.

Referring to the legislative history of the act, and speaking of the scheme of the regulation intended by the Natural

Gas Act, the Supreme Court said, in *Public Utilities Commission of Ohio v. United Fuel Gas Co.*, *supra*, at page 467:

"It is clear, as the legislative history of the Act amply demonstrates, that Congress meant to create a comprehensive scheme of regulation which would be complementary in its operation to that of the states, without any confusion of functions. The Federal Power [fol. 271] Commission would exercise jurisdiction over matters in interstate and foreign commerce, *to the extent defined in the Act*, and local matters would be left to the state regulatory bodies. Congress contemplated a harmonious, dual system of regulation of the natural gas industry—federal and state regulatory bodies operating side by side, each active in its own sphere. See H. Rep. No. 2651, 74th Cong. 2d Sess. pp. 1-3; H. Rep. No. 709, 75th Cong. 1st Sess. pp. 1-4; Sen. Rep. No. 1162, 75th Cong. 1st Sess." (Our italics).

Inferentially this means that those transactions over which jurisdiction was not given to the Federal Power Commission may be considered as local matters and left to state regulatory bodies. And again we remember that among transactions not included in the act are direct sales to large industrial consumers.

Report No. 709, 75th Cong., 1st Sess., referred to in the quotation from the *United Fuel Gas Co.* case, reads as follows:

" . . . If enacted, the present bill would for the first time provide for the regulation of natural-gas companies transporting and selling natural gas in interstate commerce. It confers jurisdiction upon the Federal Power Commission over the transportation of natural gas in interstate commerce; and the sale [fol. 272] in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use. The States have, of course, for many years regulated sales of natural gas to consumers in intrastate transactions. The States have also been able to regulate sales to consumers even though such sales are in interstate commerce, such sales being considered local in character and in the absence of Congressional prohibition subject to State regulation. (See *Pennsylvania Gas*

*Co. v. Public Service Commission* (1920), 252 U. S. 23). *There is no intention in enacting the present legislation to disturb the States in their exercise of such jurisdiction.* However, in the case of sales for resale, or so-called wholesale sales, in interstate commerce (for example sales by producing companies to distributing companies) the legal situation is different. Such transactions have been considered to be not local in character and, even in the absence of Congressional action, not subject to State regulation. (See *Missouri v. Kansas Gas Co.* (1924), 265 U. S. 298, and *Public Service Commission v. Attleboro Steam & Electric Co.* (1927), 273 U. S. 83). The basic purpose of the present legislation is to occupy this field in which the [fol. 273] Supreme Court has held that the States may not act. . . .” (Our italics).

This language of the report clearly indicates the intent of Congress. It clearly indicates that the only sales to be regulated under the provisions of the bill were sales to local distributing utilities for resale. Failure to include sales direct to large industrial consumers indicates the thought upon the part of Congress that uniformity is not required in such sales and that they are so local in nature as properly to be left to state regulation.

We seem to have all the prerequisites to state intervention. Congress has not elected to exercise its power under the commerce clause. Uniformity in control of direct sales from interstate pipe lines to large industrial consumers does not seem to be necessary. There is nothing in the record to indicate that it is. Conditions will differ from area to area and the varying needs will be met by varying procedures. Furthermore, the fact that there has been no uniformity, so far as the record shows, up to this time, and the additional fact that Congress rather deliberately left regulation of such sales out of its regulatory scheme are also indicative that uniformity is not necessary, or at least that Congress did not believe it to be necessary after investigation and reports by the Federal Trade Commission and hearings upon the bill, in which we may assume that the pertinent facts, with reference to character of regulation needed, were developed. It would also seem that [fol. 274] Congress did not believe the national interest in the regulation of such business outweighed local needs,

and the logic of the situation seems to support such position. The State of Indiana, in its scheme of utility regulation, controls sales to all other consumers of gas brought into Indiana through interstate pipe lines. The sales by local distribution utilities are regulated by the state. The record shows that many industrial consumers are thus provided with natural gas derived from exactly the same source. If sales to some are regulated by the State and others are free from regulation confusion is natural.

Also if Indiana may not regulate the sale of natural gas from interstate pipe lines direct to large industrial consumers in Indiana, such sales and deliveries will not be regulated at all under present law. The result will not only be that the pipe line owners, free of regulation, will have advantage over regulated local utilities in competing for business from large industrial consumers, but the customers of the pipe line may be given advantage over the customers of the local utilities. Local utilities whose costs per unit of gas have been increased by the reduced volume of sales caused by the direct deliveries from the pipe lines will be entitled to higher rates and resulting price disparity unfavorable to customers of the local utilities will tend to break down the state system of regulation which will have fixed, and appear to be responsible for, the unfavorable local rates. This probable result, it seems to us, [fol. 275] is a weighty consideration in balancing national interest against local need.

While the exact question now before this court has never been decided by the Supreme Court of the United States, cases have been cited which seem to us to be persuasive.

In the cases of *Public Utilities Co. v. Landon*, *supra*, *Pennsylvania Gas Co. v. Public Service Commission*, *supra*, *East Ohio Gas Co. v. Tax Commission*, *supra*, and *Missouri ex rel. Barrett v. Kansas Natural Gas Co.*, *supra*, deliveries of natural gas to consumers were held to be so local in nature as to permit state regulation and control.

The *Landon* case, the *Pennsylvania Gas Company* case and the *East Ohio Gas Company* case all held that gas taken from interstate pipe lines and delivered to consumers was subject to state regulation. It is true that these cases all involve sales in municipalities but the fact remains that the gas was all interstate gas and flowed directly from the points where captured through interstate pipe lines and distribution systems to consumers. In the *Landon* case

service to consumers was not directly from the pipe line. There was an intervening distributing company. But in the other two cases gas was supplied to consumers by the pipe line company using distribution systems owned by it directly from sources outside the state. In all three cases the business was held to be so local in nature as to permit state interference by taxation or regulation. The Supreme [fol. 276] Court, in later cases, seems to us to have indicated that the result in the Pennsylvania Gas Co. case was predicated largely upon the fact that the sales involved were to consumers. *Illinois Natural Gas Co. v. Central Illinois Public Service Co.*, p. 505, *supra*, *Jersey Central Power & Light Co. v. Federal Power Commission* (1943), 319 U. S. 61, 80 L. Ed. 1258. In the Barrett case, which did not involve sales to consumers but to distributing companies for resale, the Landon case and the Pennsylvania Gas Company case were discussed and it was said, on page 309 of 265 U. S.:

"In both cases the things done were local, and were after the business in its essentially national aspect had come to an end. The distinction which constitutes the basis of the present decision is clearly recognized in the Landon Case. The business of supplying, on demand, local consumers, is a local business, even though the gas be brought from another state, and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance. . . ."

By this language the Supreme Court of the United States seems to us to indicate that the test is whether or not local business is involved and that supplying local consumers [fol. 277] is a local business. It does not seem to be material whether the service is by the transporting company or by an independent distributing company. In the case before us the sales are and will be to local customers for their own consumption. Therefore, paraphrasing the language quoted, the local interest is paramount and interference with interstate commerce, if any, is of minor importance and permissible.

In the case of *Southern Natural Gas Corp. v. Alabama, supra*, the validity of a franchise tax on a pipe line company was involved. The pipe line company furnished natural gas to three distributing utilities and this business was, of course, interstate under the Natural Gas Act and the decisions we have already cited. It is also distributed gas directly to one large industrial consumer. The gas to this consumer was delivered in continuous movement from out-state gas fields. The court held that the tax was valid and in doing so indicated that the sale of gas to the one industrial consumer was so local or intrastate in nature as to justify the tax, which could not be imposed if the pipe line company was engaged only in interstate commerce.

There are many other cases cited by the parties on this phase of the case which have been helpful in reaching our conclusion. We have examined all of them, but discussion of more of them would only unnecessarily further prolong this opinion.

We may add in connection with our comment on the [fol. 278] decided cases that we have had in mind that taxation by a state and the exercise of its police power are not always justified by the same facts. It very recently has been said by the Supreme Court of the United States (*Freeman v. Hewit*, decided December 16, 1946) that state taxation of local aspects of interstate commerce will be more carefully scrutinized and more consistently resisted than state regulation under the police power. After weighing the competing State and Federal interests interference with local phases of interstate commerce by regulation may be allowed when interference by taxation would not be. It is pointed out that there are always other sources from which revenue may be derived by taxation and that revenue serves as well no matter what its source, whereas, as said by the Court in the *Freeman v. Hewit* case *supra*, "A police regulation of local aspects of interstate commerce is a power often essential to a State in safeguarding vital local interests. At least until Congress chooses to enact a nation-wide rule, the power will not be denied to the State. *The Minnesota Rate Cases*, 230 U. S. 352, 402 et seq.; *S. C. Hwy. Dept. v. Barnwell Bros.*, 303 U. S. 177; *Union Brokerage Co. v. Jensen*, 322 U. S. 202, 209-12."

This leniency toward the police power as compared with the taxing power of the states inures to the benefit of appellants in the case before us, not only in considering the

merits of the differences involved but in weighing the value of the decided cases as precedents.

[fol. 279] Suggestion is made by appellee, but not very vigorously urged, that it is not a public utility in its service direct to large industrial consumers in Indiana, and is, therefore, not subject to regulation in connection with such service. By the Natural Gas Act (Sec. 1 (a)) it appears that the natural gas business had been investigated by the Federal Trade Commission and reports had been made to Congress, and upon the basis of such investigation and reports Congress declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and it is traditionally accepted that any business affected with a public interest is subject to regulation and control.

We also have an Indiana statute which defines a public utility, subject to control of the Indiana Public Service Commission, to be ". . . every corporation . . . , that now or hereafter may own, operate or control any . . . plant or equipment . . . for the . . . transmission, delivery or furnishing of heat, light, water or power . . . either directly or indirectly to or for the public . . . ." Sec. 54-105 Burns' 1933.

Another Indiana Statute became law on February 26, 1945, before the orders involved in this action were made by the Indiana Public Service Commission. Acts of 1945, Chap. 53, p. 110. This act adds an additional section to the Indiana Public Service Commission Act aimed directly at the natural gas business, and by the act a "gas utility" [fol. 280] was defined to mean and include "any public utility selling or proposing to sell or furnish gas directly to any consumer or consumers within the State of Indiana for his, its or their domestic, commercial or industrial use." Certainly appellee is selling and proposing to sell gas directly to consumers in Indiana.

The bottom question on this phase of the case is whether the appellee is furnishing gas in Indiana directly or indirectly to or for the public. Admittedly it is selling gas in Indiana indirectly to and for the public through distributing companies and that makes it a public utility under the Indiana statute, subject to regulation and control by the Indiana Public Service Commission. Also admittedly it is selling and proposing to sell gas directly to consumers within the state. This part of its business and its inter-

state transportation and its sales to local distributing utilities are so integrated that in any practical consideration of the state's right to regulate direct sales to consumers that activity must be appraised as a part of its entire business in Indiana. Its rights and duties, with reference to such direct sales, must be determined in the light of its over-all character in the State of Indiana. It will compete with local activities in soliciting industrial business and will be in position to discriminate in its service and in its rates and in its regulations. This freedom is inconsistent with all concepts of the duties and obligations of a person or corporation engaged in such business.

[fol. 281] The primary duty of a public utility is to serve on reasonable terms all those who desire the service it renders. This duty does not permit it to pick and choose and to serve only those portions of the territory which it finds most profitable, leaving the remainder to get along without the service which it alone is in a position to give. *United Fuel Gas Co. v. Railroad Commission* (1929), 278 U. S. 300, 309, 73 L. Ed. 390, 396; *Industrial Gas Co. v. Public Utilities Commission of Ohio* (1939), 135 Ohio St. 408, 21 N. E. (2d) 166, 168. From the last named case, we quote the following:

"It may well be urged that a corporation, calculated to compete with public utilities and take away business from them, should be under like regulatory restriction if effective governmental supervision is to be maintained. Actual or potential competition with other corporations whose business is clothed with a public interest is a factor to be considered; otherwise corporations could be organized to operate like appellant and in competition with bona fide utilities until the whole state would be honey-combed with them and public regulation would become a sham and delusion.

"What appellant seeks to do is to pick out certain industrial consumers in select territory and serve them under special contracts to the exclusion of all others except such private or domestic consumers as may suit [fol. 282] its convenience and advantage. There were other industrial consumers with whom the appellant refused or failed to agree and so did not serve them. If such consumers were served at all, it must necessarily be by a competitor. If a business so carried on

may escape public regulation then there would seem to be no valid reason why appellant may not extend the service to double, triple or many times the number now served without being amenable to regulative measures."

The law, as declared in *Industrial Gas Company v. Public Utilities Commission of Ohio*, *supra*, seems to us fair, reasonable and logical and, when applied to the facts in the case before us, leaves appellee unquestionably in the position of a public utility subject to regulation.

The same thought which was behind the Ohio case, just cited and quoted, with which thought we agree, was also incorporated in *Re Potter Development Co.* (1939), 32 P. U. R., N.S. 45, decided by the Public Service Commission of New York. In that case, the Potter Company sold natural gas to the Corning Glass Works. The Potter Company obtained its gas from an interstate transmission line and piped it to the Corning Glass Works, which is located in the City of Corning, New York. The Glass Works was the only customer served by the Potter Company, but the interstate pipe line also furnished gas to an affiliate which, as a public utility, operated the gas distribution system in the City of [fol.283] Corning. There was a proceeding to determine whether the Potter Company was a public utility subject to regulation by the New York Public Service Commission. The Commission held that it was, and, in support of its holding, argued that to hold otherwise would invite widespread circumvention of the Public Service law and would result in a multitude of companies supplying gas under special contracts in competition with public utilities and indicated that such a situation would be intolerable.

Reversed with instructions to enter judgment denying plaintiff the relief sought.

Emmert, J., not participating.

[fol. 284] And afterwards, to-wit: On the 21st day of February 1947, the same being the 77th day of the November Term, 1946, the following proceeding was had in said cause. Come now the appellees by counsel and file a petition with briefs (9) thereon for a rehearing in the above entitled appeal, together with proof of service of a copy of petition and brief on opposing counsel, which petition is in the words and figures following, to-wit: (H. I.)

And afterwards, to-wit: On the 28th day of February 1947, the same being the 83rd day of the November Term, 1946, the following proceeding was had in said cause.

Comes now the Corporate Appellants and files separate brief in opposition to petition for rehearing and proof of service, which brief is in the words and figures following, to-wit: (H. I.).

And afterwards, to-wit: On the 1st day of March 1947 the same being the 84th day of the November Term, 1946, the following proceeding was had in said cause.

Comes now the appellants and files a memorandum opposing petition for rehearing (9) and proof of service which memorandum is in the words and figures following, to-wit: (H. I.).

[fol. 285]

[File endorsement omitted]

IN THE SUPREME COURT OF INDIANA

[Title omitted]

APPELLEE'S PETITION FOR REHEARING—Filed February 21,  
1947

Comes now Panhandle Eastern Pipe Line Company, appellee in the above entitled cause and requests that a rehearing of this cause be granted, that the opinion and judgment of this Court heretofore rendered be set aside and vacated, and that the judgment of the Randolph Circuit Court be affirmed, and as grounds therefor says that the decision of this Court in said cause is erroneous in each of the following respects, and for each of the following reasons:

1. That the Court erred in reversing the judgment of the Randolph Circuit Court.

2. That the Court erred in holding that the price charged by appellee for the sale and delivery of natural gas transported in interstate commerce to Anchor-Hocking and DuPont under individual contracts under the uncontroverted facts in this record with reference to such sales and deliveries is subject to regulation by the State of Indiana by and through the appellant, The Public Service Commission of Indiana.

3. That the Court erred in failing to hold that Article I, Section 8 (3) of the Constitution of the United States of its own force precludes the State of Indiana by or through appellant, The Public Service Commission of Indiana, or otherwise, from regulating or fixing the price at which natural gas transported into Indiana from Kansas and Texas may be sold and delivered to Anchor-Hocking Glass Company and E. I. DuPont DeNemours Company under individual contracts under the uncontroverted facts in the record in this case with reference to the character of such sales and deliveries.

4. That the Court erred in sustaining the order of appellant, The Public Service Commission of Indiana, construed by the opinion of this Court as an unequivocal assertion of the power and jurisdiction of said Commission to regulate and fix rates upon sales of natural gas from appellee's interstate pipe line direct to large industrial consumers of gas in Indiana, under the facts disclosed by the record in this case with reference to the character of such sales and deliveries as against appellee's contention that such regulation is precluded by Article I, Section 8 (3) of the Constitution of the United States.

5. That the Court erred in failing to hold that Article I, Section 8 (3) of the Constitution of the United States of its own force precludes the State of Indiana by or through appellant, The Public Service Commission of Indiana from [fol. 287] regulating either the rates at which natural gas transported into Indiana in interstate commerce may be sold and delivered to the Anchor-Hocking and DuPont Companies under the facts disclosed by the record in this case or the service in making sales and deliveries in interstate commerce directly to such industrial consumers.

6. That the Court erred in holding that direct sales and deliveries of natural gas transported in interstate commerce to large industrial consumers under individual contracts under the facts disclosed by the record in this case, constitute local matters subject to state regulation either as to the rates charged therefor or as to the services rendered.

7. That the Court erred in inferring either from the language of the Federal Natural Gas Act or the Committee Re-

ports preceding its enactment, that direct sales to large industrial consumers of natural gas transported in interstate commerce under individual contracts were or are considered by Congress local matters properly left to state regulatory bodies.

8. That the Court erred in holding that the failure of Congress to include in the Federal Natural Gas Act authority of the Federal Power Commission to regulate the rates for direct sales and deliveries to industrial consumers indicates a thought or belief of Congress that uniformity of regulation of such sales is not required and that they are so local in character as to be properly left to state regulation.

9. That the Court erred in holding that the relative national or local importance of appellee's business of selling [fol. 288] direct to industrial consumers natural gas transported in interstate commerce can properly be ascertained by inferring from Committee Reports in connection with the passage of the Natural Gas Act reasons unexpressed in such legislation for the failure of Congress to provide for federal regulation of such sales.

10. That the Court erred in holding that the thought or belief of Congress not embodied in actual legislation but inferred as a reason for its failure to enact legislation can remove the protection of the Commerce Clause from the business of selling and delivering natural gas transported in interstate commerce direct to large industrial consumers under individual contracts.

11. That the Court erred in holding that uniformity in the control of direct sales from interstate pipelines to large industrial consumers is not necessary if governmental regulation of any character is to be imposed.

12. That the Court erred in failing to hold that uniformity in governmental regulation of direct sales of natural gas transported in interstate commerce from interstate pipelines to large industrial consumers is necessary in the constitutional sense and that if governmental regulation of any character is to be imposed such necessity requires that uniform regulation be prescribed by a single authority.

13. That the Court erred in holding that the fact that Congress left regulation of direct sales to large industrial

[fol. 289] consumers of natural gas transported in interstate commerce out of its regulatory scheme as embodied in the Federal Natural Gas Act, establishes that uniform regulation is not necessary if governmental regulation is to be imposed or that Congress did not believe such uniformity to be necessary.

14. That the Court erred in holding that the Federal Natural Gas Act and the Committee Reports in connection with the enactment thereof, separately or collectively indicate a belief of Congress that the national interest in the regulation of the business of direct sales to large industrial consumers of natural gas transported in interstate commerce is outweighed by local matters or establish that national interest therein is subordinate to local interest.

15. That the Court erred in holding that any local interest of the state in protecting its local distributing companies from competition with direct sales of natural gas transported in interstate commerce to large industrial consumers constitutes a local interest justifying local regulation of such business.

16. That the Court erred in holding that competitive advantages of a pipeline company engaged in interstate commerce can be properly neutralized by local regulation for the purpose of protecting local competitors or their customers from the consequences of such advantages.

17. That the Court erred in holding that all sales and deliveries of natural gas in interstate commerce are of paramount local importance and subject to local regulation if such sales are for consumption by the purchaser rather than for resale.

[fol. 290] 18. That the Court erred in holding that the character of the business of transporting and selling natural gas in interstate commerce as local or national is properly determined by the use to which the buyer of the commodity intends to put it.

19. That the Court erred in holding that direct sales to industrial consumers of natural gas transported in interstate commerce are subject to state regulation because of paramount local interest.

20. That the Court erred in holding that the regulation of the price to be paid or received for natural gas trans-

ported in interstate commerce and delivered direct to large industrial consumers is a regulation of a local phase or aspect of interstate commerce.

21. That the Court erred in holding that by reason of the sales of gas in interstate commerce to local distributing companies appellee is a public utility subject to regulation and control by the appellant, The Public Service Commission of Indiana.

22. That the Court erred in holding that appellee in its service direct to large industrial consumers of natural gas transported in interstate commerce is a public utility subject to the jurisdiction of the appellant, The Public Service Commission of Indiana either because of its integration of such sales and its sales to local distributing companies or otherwise.

23. That the Court erred in holding that the State of Indiana by mere statutory definition of a specific business [fol. 291] as a public utility can extend its regulatory jurisdiction to include either appellee's sale to local distributing companies in Indiana or its direct sales and deliveries under individual contracts to large industrial consumers of natural gas transported in interstate commerce and in thereby denying to appellee the protection of Article I, Section 8 (3) of the Constitution of the United States.

24. That the Court erred in holding that in selling and delivering directly to large industrial consumers natural gas transported in interstate commerce appellee is not free to pick and choose its customers but may be required by the State of Indiana or The Public Service Commission of Indiana to serve all those who desire such service and in thereby denying to appellee the protection of Article I, Section 8 (3) of the Constitution of the United States.

25. That the Court erred in holding that Section 54-105 Burns' Ind. Stat. 1933 or any other section of the Statutes of Indiana applicable to public utilities may be validly applied to appellee or any portion of the business it transacts in Indiana over appellee's objection that such application is in violation of Article I, Section 8 (3) of the Constitution of the United States.

26. That the Court erred in holding that Chapter 53 of the Acts of the General Assembly of 1945 may be validly

applied to appellee or any portion of the business which it transacts in Indiana over appellee's objection that such application is in violation of Article I, Section 8 (3) of the Constitution of the United States.

[fol. 292] 27. That the Court erred in failing to hold that the order of appellant, ~~The Public Service Commission~~ of Indiana asserting power and jurisdiction to regulate rates, and prescribe terms of service for the sale and delivery by appellee of natural gas transported in interstate commerce directly to Anchor-Hocking and DuPont under individual contracts directly and unlawfully burdens interstate commerce in violation of Article I, Section 8 (3) of the Constitution of the United States.

28. That the judgment and decision of this Court sustaining the order of the appellant, The Public Service Commission of Indiana, imposes a direct and unlawful burden on interstate commerce in violation of Article I, Section 8 (3) of the Constitution of the United States.

Wherefore the above named appellee prays that a rehearing of this cause be granted, that the opinion and judgment of this Court heretofore rendered be set aside and vacated and that the judgment of the Randolph Circuit Court be affirmed.

William R. Hunter, George M. Beame, Alan W. Boyd,  
Attorneys for Appellee.

[fol. 293]

[Title omitted]

APPELLANTS' ACKNOWLEDGMENT OF SERVICE OF APPELLEE'S  
PETITION FOR REHEARING AND BRIEF AND RECEIPT OF  
COPIES THEREOF

Service of the above and foregoing petition for rehearing, together with appellee's brief in support thereof and receipt of copies of the same this 21st day of February, 1947 are hereby acknowledged.

— —, Attorney General of Indiana, Attorney  
for Appellant, The Public Service Commission of  
Indiana. — —, Attorneys for Appellants, In-  
diana Gas & Water Company, et al.

[fol. 294] IN SUPREME COURT OF INDIANA

ORDER DENYING PETITION FOR REHEARING—March 25, 1947

Come now the parties by counsel and the court, being advised in the premises, denies the appellee's petition for rehearing heretofore filed herein, which petition is in the words and figures following, to-wit: (H. I.).

And afterwards, to-wit: On the 25th day of March 1947, the same being the 104th day of the November Term, 1946, the further following proceedings were had in said cause.

Comes now the appellees and files the following:

Appellee's petition for appeal to the United States Supreme Court;

Assignment of Errors;

Statement as to Jurisdiction of appeal;

Order allowing appeal, signed by Frank E. Gilkison, C. J.;

Appeal Bond;

Citation and proof of service;

Notice of allowance of appeal and proof of service;

Stipulation for Transcript.

[fol. 295] IN THE SUPREME COURT OF INDIANA

[Title omitted]

PETITION FOR APPEAL FROM THE SUPREME COURT OF THE STATE OF INDIANA TO THE SUPREME COURT OF THE UNITED STATES

To the Chief Justice of the Supreme Court of the State of Indiana:

Panhandle Eastern Pipe Line Company, your petitioner, respectfully shows:

1. Petitioner is the appellee-appellant in the above-entitled cause.

2. The above-named appellee-appellant filed a complaint in the Randolph Circuit Court of the State of Indiana on the eleventh day of January, 1946, for an order and judg-

[fol. 296] ment setting aside and vacating an order of appellant-appellee, The Public Service Commission of Indiana, and enjoining the enforcement thereof, and judgment was entered for your petitioner.

3. On appeal from said judgment to the Supreme Court of the State of Indiana, the same was reversed on the fifth day of February, 1947, and thereafter, within the time allowed by law, your petitioner applied for a rehearing, which was denied by said court on the 25 day of March, 1947.

4. In said cause there is drawn in question the validity of certain statutes of the State of Indiana, on the ground of their being repugnant to the Constitution of the United States, and the decision is in favor of their validity in that (1) an order and supplemental order issued by The Public Service Commission of Indiana, asserting and exercising jurisdiction and authority to regulate rates and service for your petitioner's interstate sales of natural gas transported by pipe line from Texas and Kansas and delivered in Indiana directly to large industrial consumers was sustained as against your petitioner's timely objection that said order and supplemental order were invalid by reason of Article I, Section 8(3) of the Constitution of the United States, and (2) the various provisions of the Public Service Commission Act of Indiana (Burns' Indiana Statutes Annotated, 1933, Sections 54-101, et seq.) were held applicable to [fol. 296-a] your petitioner's business of selling and delivering to large industrial consumers in Indiana natural gas transported by interstate pipe line from Texas and Kansas as against your petitioner's timely objection that such application violated Article I, Section 8(3) of the Constitution of the United States.

Wherefore, petitioner prays for the allowance of an appeal from said Supreme Court of the State of Indiana to the Supreme Court of the United States, in order that the decision of the Supreme Court of the State of Indiana may be examined and reversed, and also prays that a transcript of the record, proceedings and papers in this case, duly authenticated by the Clerk of the Supreme Court of Indiana, may be sent to the Supreme Court of the United States as provided by law.

Petitioner, desiring the appeal to be a supersedeas, prays an order touching the security to be required of it, and the approval of such bond as required in this case.

The errors upon which your petitioner claims to be entitled to an appeal are those above indicated and more fully set forth in the assignment of errors filed herewith.

Dated March 25, 1947.

(S) Alan W. Boyd, John S. Li Yost, Samuel H. Riggs, Attorneys for Panhandle Eastern Pipe Line Company, Appellee-Appellant.

[fol. 297] IN THE SUPREME COURT OF INDIANA

[Title omitted]

#### ASSIGNMENT OF ERRORS

In support of its petition for appeal to the Supreme Court of the United States in the above-entitled cause, Panhandle Eastern Pipe Line Company, appellee-appellant, assigns the following errors in the record and proceedings in said cause:

1. The Supreme Court of Indiana erred in holding valid, as against the contention of appellee-appellant that the same are repugnant to Article I, Section 8, Clause 3, of the Constitution of the United States, the order of the Public Service Commission of Indiana issued on November 21, 1945, and its order supplemental thereto issued April 9, [fol. 298] 1946, said orders being construed by the Supreme Court of Indiana as an unequivocal assertion of the power and jurisdiction of said Commission to regulate interstate sales and deliveries of natural gas by appellee-appellant to large industrial consumers of gas in Indiana, including the fixing of rates therefor, under the facts disclosed by the record in this case with reference to the character of such sales and deliveries.

2. The Supreme Court of Indiana erred in holding valid the application of the Public Service Commission Act of Indiana and, particularly, the section thereof defining a public utility subject to regulation by the Indiana Public Service Commission, codified as Section 54-105, Burns' Indiana Statutes Annotated, 1933, Volume 10, page 335, to appellee-appellant's business of selling and delivering to large industrial consumers in Indiana natural gas transported in interstate commerce under the facts disclosed in

this case with reference to the character of such sales and deliveries, as against the contention of appellee-appellant that the same, as applied to its business in Indiana, is repugnant to Article I, Section 8, Clause 3, of the Constitution of the United States.

3. The Supreme Court of Indiana erred in failing to hold that Article I, Section 8, Clause 3, of the Constitution of the United States of its own force precludes the State of Indiana, by or through the Public Service Commission of Indiana or otherwise, from regulating or fixing the price at which natural gas transported into Indiana from Kansas and Texas may be sold and delivered by appellee-appellant to Anchor-Hocking Glass Company and E. I. DuPont [fol. 299] de Nemours Company, pursuant to special, private, individual contracts, under the uncontroverted facts in the record in this case with reference to the character of such sales and deliveries.

4. The Supreme Court of Indiana erred in holding that the price charged by appellee-appellant for natural gas sold and delivered in interstate commerce to Anchor-Hocking Glass Company and to E. I. DuPont de Nemours Company, pursuant to special, private, individual contracts, under the uncontroverted facts in this record with reference to such sales and deliveries, is subject to regulation by the State of Indiana by and through the Public Service Commission of Indiana.

5. The Supreme Court of Indiana erred in holding that direct sales and deliveries of natural gas transported in interstate commerce to large industrial consumers pursuant to special, private, individual contracts, under the facts disclosed by the record in this case, constitute local matters subject to state regulation either as to the rates charged therefor or as to the services rendered.

6. The Supreme Court of Indiana erred in inferring either from the language of the Federal Natural Gas Act or the Committee Reports preceding its enactment, that direct sales to large industrial consumers of natural gas transported in interstate commerce pursuant to special, private, individual contracts were or are considered by Congress local matters properly left to state regulatory bodies.

[fol. 300] 7. The Supreme Court of Indiana erred in holding that the failure of Congress to include in the Federal Natural Gas Act authority of the Federal Power Commission to regulate the rates for direct sales and deliveries to industrial consumers indicates a thought or belief of Congress that uniformity of regulation of such sales is not required and that they are so local in character as to be properly left to state regulation.

8. The Supreme Court of Indiana erred in holding that the relative national or local importance of appellee-appellant's business of selling direct to industrial consumers natural gas transported in interstate commerce can properly be ascertained by inferring from Committee Reports in connection with the passage of the Natural Gas Act reasons unexpressed in such legislation for the failure of Congress to provide for federal regulation of such sales.

9. The Supreme Court of Indiana erred in holding that the thought or belief of Congress, not embodied in actual legislation but inferred as a reason for its failure to enact legislation, has removed or can remove the protection of the Commerce Clause from the business of selling and delivering natural gas transported in interstate commerce direct to large industrial consumers under individual contracts.

10. The Supreme Court of Indiana erred in failing to hold that uniformity in governmental regulation of direct sales of natural gas transported in interstate commerce [fol. 301] from the interstate pipe lines to large industrial consumers is necessary in the constitutional as well as the practical sense and that, if governmental regulation of any character is to be imposed, such necessity requires that uniform regulation be prescribed by a single authority.

11. The Supreme Court of Indiana erred in holding that there was "nothing in the record to indicate" that "uniformity in control of direct sales from interstate pipe lines to large industrial consumers" is necessary, thus ignoring the uncontroverted testimony of witness O. W. Morton establishing that such uniformity is necessary so far as the regulation of service is concerned.

12. The Supreme Court of Indiana erred in holding that the fact that Congress left regulation of direct sales to

large industrial consumers of natural gas transported in interstate commerce out of its regulatory scheme as embodied in the Federal Natural Gas Act, establishes that uniform regulation is not necessary if governmental regulation is to be imposed or ~~that~~ Congress did not believe such uniformity to be necessary.

13. The Supreme Court of Indiana erred in holding that the Federal Natural Gas Act and the Committee Reports in connection with the enactment thereof, separately or collectively, indicate a belief of Congress that the national interest in the regulation of the business of direct sales to large industrial consumers of natural gas transported in interstate commerce is outweighed by local matters or establish that national interest therein is subordinate to local interest.

[fol. 302]. 14. The Supreme Court of Indiana erred in holding that any local interest of the state in protecting its local distributing companies from competition with direct sales of natural gas transported and sold in interstate commerce to large industrial consumers, constitutes a local interest justifying local regulation of such interstate business.

15. The Supreme Court of Indiana erred in holding that competitive advantages of a pipe line company engaged in interstate commerce can be properly neutralized by local regulation for the purpose of protecting local competitors or their customers from the consequences of such advantages.

16. The Supreme Court of Indiana erred in holding that all sales and deliveries of natural gas in interstate commerce are of paramount local importance and subject to local regulation if such sales are for consumption by the purchaser rather than for resale.

17. The Supreme Court of Indiana erred in holding that the nature and classification of the business of transporting and selling natural gas in interstate commerce as local or national is properly determined by the use to which the buyer of the commodity intends to put it.

18. The Supreme Court of Indiana erred in holding that the regulation of the price to be paid or received for natural gas transported in interstate commerce and delivered to

large industrial consumers whose manufactured products are distributed primarily in interstate commerce, as shown by the evidence in this case, is a regulation of a local phase or aspect of interstate commerce.

[fol. 303] 19. The Supreme Court of Indiana erred in holding that, by reason of its sales of gas in interstate commerce to local distributing companies, appellee-appellant is a public utility subject to regulation and control by the Public Service Commission of Indiana.

20. The Supreme Court of Indiana erred in holding that appellee-appellant, in its service direct to large industrial consumers of natural gas transported in interstate commerce, is a public utility subject to the jurisdiction of the Public Service Commission of Indiana, either because of its integration of such sales and its sales to local distributing companies or otherwise.

21. The Supreme Court of Indiana erred in holding that the State of Indiana, by mere statutory definition of a specific business as a public utility, can extend its regulatory jurisdiction to include either appellee-appellant's interstate sales to local distributing companies in Indiana or its interstate direct sales and deliveries under special, private, individual contracts to large industrial consumers of natural gas; thereby denying to appellee-appellant the protection of Article I, Section 8, Clause 3, of the Constitution of the United States.

22. The Supreme Court of Indiana erred in holding that, in selling and delivering directly to large industrial consumers natural gas transported in interstate commerce, appellee-appellant is not free to pick and choose its customers but may be required by the State of Indiana or the Public Service Commission of Indiana to serve all those [fol. 304] who desire such service; thereby denying to appellee-appellant the protection of Article I, Section 8, Clause 3, of the Constitution of the United States.

23. The Supreme Court of Indiana erred in holding that Section 54-105, Burns' Indiana Statutes Annotated, 1933, or any other section of the Statutes of Indiana applicable to public utilities may be validly applied to appellee-appellant or any portion of the business it transacts in Indiana, over its objections that such application is repugnant to

Article I, Section 8, Clause 3, of the Constitution of the United States.

24. The Supreme Court of Indiana erred in holding that Chapter 53 of the Acts of the General Assembly of Indiana of 1945, codified as Section 54-601A of Burns' Indiana Statutes Annotated, 1945 Supp., may be validly applied to appellee-appellant or any portion of the business which it transacts in Indiana over its objection that such application is repugnant to Article I, Section 8, Clause 3, of the Constitution of the United States.

25. The Supreme Court of Indiana erred in failing to hold that the orders of the appellant-appellee, The Public Service Commission of Indiana, asserting power and jurisdiction to regulate rates, and to prescribe terms of service, for the sale and delivery by appellee-appellant of natural gas transported in interstate commerce directly to Anchor-Hocking Glass Company and E. I. DuPont de Nemours Company under special private, individual contracts, directly and unlawfully burdens interstate commerce in [fol. 305] violation of Article I, Section 8, Clause 3, of the Constitution of the United States.

Wherefore, Panhandle Eastern Pipe Line Company prays that the errors assigned above be reviewed and corrected by the Supreme Court of the United States and that the judgment entered in this case by the Supreme Court of Indiana be reversed and a judgment rendered in favor of appellee-appellant.

Dated at Indianapolis, Indiana, this 25 day of March, 1947.

(S) Alan W. Boyd, John S. L. Yost, Samuel H. Riggs, Attorneys for Panhandle Eastern Pipe Line Company, Appellee-Appellant.

[fols. 306-308] Bond on appeal for \$500.00 approved and filed March 25, 1947, omitted in printing.

[fol. 309] IN THE SUPREME COURT OF INDIANA

No. 28225

THE PUBLIC SERVICE COMMISSION OF INDIANA, LEROY E. YODER, Lawrence E. Carlson, and Lawrence W. Cannon, as Members of The Public Service Commission of Indiana, Indiana Gas & Water Company, Inc., Central Indiana Gas Company, Northern Indiana Public Service Company, Kokomo Gas & Fuel Company, Southern Indiana Gas & Electric Company, and Greenfield Gas Company, Inc., Appellants-appellees,

v.

PANHANDLE EASTERN PIPE LINE COMPANY, Appellee-Appellant

#### ORDER ALLOWING APPEAL

The petition of Panhandle Eastern Pipe Line Company, appellee-appellant, for an appeal in the above cause to the Supreme Court of the United States from the Supreme Court of the State of Indiana, and the assignment of errors filed therewith, and the record of said cause having been considered,

It is Ordered that an appeal be and is allowed to the Supreme Court of the United States from the Supreme Court of the State of Indiana, as prayed in said petition, and [fol. 310] that the Clerk of the Supreme Court of the State of Indiana shall prepare and certify a transcript of the record and proceedings in the above cause and transmit the same to the Supreme Court of the United States within forty days from the date hereof. The transcript of the record and proceedings so transmitted may be either a transcript of the entire record and proceedings or such portions thereof as the parties to this cause shall designate by written stipulation filed with the Clerk of this Court and approved by this Court.

It is Further Ordered that said Panhandle Eastern Pipe Line Company shall give good and sufficient security in the sum of Five Hundred Dollars, that said appellee-appellant

shall prosecute said appeal to effect, and that if said appellee-appellant fail to make its plea good, it shall answer all damages and costs.

The said appellee-appellant now presenting a bond in the sum of Five Hundred Dollars (\$500.00), with United States Guaranty Company as surety,

It is ~~For~~ordered that the same be and is hereby approved. The appeal shall operate as a supersedeas.

Dated March 25, 1947.

(Signed) Frank E. Gilkison, Chief Justice of the Supreme Court of Indiana.

[fols. 311-312] Citation in usual form showing service on Cleon Foust, et al., omitted in printing.

[fol. 313] IN THE SUPREME COURT OF INDIANA

[Title omitted]

#### STIPULATION AS TO CONTENTS OF TRANSCRIPT ON APPEAL

It is Hereby Stipulated by and Between the Parties Hereto, through their respective attorneys, and subject to the approval of the Supreme Court of Indiana by the Chief Justice thereof, that the portion of the record to be included in the transcript to be filed in the Supreme Court of the United States; pursuant to the appeal heretofore allowed herein, shall include only the following:

I. The transcript of the record certified and transmitted to the Clerk of the Supreme Court of Indiana by the Clerk [fol. 314] of the Randolph Circuit Court, including therein only the following:

A. The complaint of Panhandle Eastern Pipe Line Company filed in the Randolph Circuit Court, omitting therefrom Exhibit A thereto, which the parties stipulate and agree is identical with the printed document to be included in Exhibit 2 in the bill of exceptions containing the evidence in this cause denominated Commission Order and consisting of 86 printed pages.

B. The answer to the complaint filed in the Randolph Circuit Court by Public Service Commission of Indiana, et al.

C. The intervening petition of Indiana Gas and Water Company, Inc. It is stipulated that the intervening petitions of Central Indiana Gas Company, Northern Indiana Public Service Company, Kokomo Gas and Fuel Company, Southern Indiana Gas and Electric Company were identical with that of Indiana Gas and Water Company, Inc., and that the answers filed by said intervenors in the Randolph Circuit Court were identical with that filed by Public Service Commission of Indiana, et al.

D. The supplemental complaint filed in the Randolph Circuit Court by Panhandle Eastern Pipe Line Company.

E. The amended answer to the supplemental complaint filed in the Randolph Circuit Court by Public Service Commission of Indiana, et al.

F. The finding and judgment of the Randolph Circuit [fol. 315] Court.

G. The motions for new trial filed respectively by the Public Service Commission of Indiana and by Indiana Gas and Water Company, Inc., et al and the respective orders overruling the same.

H. The bill of exceptions containing the evidence introduced in the Randolph Circuit Court, including therefrom only the following:

(1) Exhibit No. 1 offered by Panhandle Eastern Pipe Line Company and admitted in evidence, omitting therefrom formal parts and the exhibit attached thereto, setting forth the provisions of the Articles of Incorporation of Panhandle Eastern Pipe Line Company relating to its corporate powers.

(2) Exhibit No. 2 offered by Panhandle Eastern Pipe Line Company and admitted in evidence, being the proceedings before the Public Service Commission of Indiana up to and including its order of November 21, 1945, but including therefrom only the following:

(a) The Stipulation of Facts entered into between the Public Counsellor of Indiana, Panhandle Eastern Pipe Line Company, Central Indiana Gas Company, Greenfield Gas Company, Inc., Kokomo Gas and Fuel Company, Northern Indiana Public Service Company, Public Service Company of Indiana (Indiana Gas and Water Company, Inc.,) and

Southern Indiana Gas and Electric Company, dated and [fol. 316] filed January 9, 1945, omitting therefrom all exhibits attached thereto except Exhibits C, J-1, J-2, and N-1.

(b) The Stipulation of Evidence entered into between the Public Counsellor of Indiana, Panhandle Eastern Pipe Line Company, Central Indiana Gas Company, Greenfield Gas Company, Inc., Kokomo Gas and Fuel Company, Northern Indiana Public Service Company, Public Service Company of Indiana, Inc. (Indiana Gas and Water Company, Inc.) and Southern Indiana Gas Company, dated and filed March 28, 1945, omitting all exhibits attached thereto.

(c) The entire Commission Order of the Public Service Commission of Indiana entered November 21, 1945, consisting of 86 printed pages. It is hereby stipulated that the Findings of Fact of the Public Service Commission of Indiana, appearing at pages 16 to 50, inclusive (Commission numbering), correctly summarize all of the evidence offered and introduced in the proceedings of said Commission up to and including said order except to the extent that matters not included therein are included in the stipulations filed in said proceedings herein designated.

(d) The Supplemental Stipulation of Facts.

[fol. 317] (3) The deposition of O. W. Morton, offered by Panhandle Eastern Pipe Line Company and admitted in evidence in the Randolph Circuit Court. A copy of a condensed statement thereof in narrative form, stipulated by the parties hereto to be a correct statement may be included in the transcript in lieu of the said deposition in question and answer form.

(4) Exhibit 3, offered by Panhandle Eastern Pipe Line Company and admitted in evidence in the Randolph Circuit Court.

(5) The supplemental stipulation of facts admitted in evidence in the Randolph Circuit Court.

(6) Exhibit 1, offered and admitted in evidence in the Randolph Circuit Court by the Public Service Commission of Indiana. It is stipulated that all evidence offered or introduced in the Randolph Circuit Court is designated in this stipulation for inclusion in the transcript to be filed in the Supreme Court of the United States except the

matters omitted from Exhibit 1 introduced by Panhandle Eastern Pipe Line Company hereinbefore specified in paragraph I, G, (1) hereof, and exhibit 2 hereinbefore specified in paragraph I, H, (2) hereof.

II. The Assignment of errors filed in the Supreme Court of Indiana by the Public Service Commission of Indiana, et al., omitting formal parts.

[fol. 318] III. The assignment of errors filed in the Supreme Court of Indiana by Indiana Gas and Water Company, Inc., Central Indiana Gas Company, Northern Indiana Public Service Company, Kokomo Gas & Fuel Company, Southern Indiana Gas & Electric Company, and Greenfield Gas Company, omitting formal parts.

IV. The entry in the proceedings in the Supreme Court of Indiana showing the filing of the record and assignment of errors therein on August 3, 1946.

V. The entry in the proceedings in the Supreme Court of Indiana showing the submission of this cause on August 3, 1946.

VI. The opinion of the Supreme Court of Indiana filed February 5, 1947.

VII. The judgment of the Supreme Court of Indiana entered February 5, 1947.

VIII. The entry in the proceedings of the Supreme Court of Indiana showing the filing of the petition of Panhandle Eastern Pipe Line Company for rehearing and said petition for rehearing.

IX. The order of the Supreme Court of Indiana denying the petition for rehearing of Panhandle Eastern Pipe Line Company entered March —, 1947.

X. The petition for and order allowing appeal to the Supreme Court of the United States by Panhandle Eastern Pipe Line Company filed March —, 1947.

XI. The assignment of errors filed by Panhandle Eastern Pipe Line Company March —, 1947.

[fol. 319] XII. The appeal bond of Panhandle Eastern Pipe Line Company filed March —, 1947, and the entry approving the same.

XIII. The jurisdictional statement of Panhandle Eastern Pipe Line Company under Rule 12 of the Revised Rules of the Supreme Court of the United States, together with the appendix attached thereto, filed March —, 1947.

XIV. The citation to the Public Service Commission of Indiana, et al., as appellees upon appeal to the Supreme Court of the United States filed March —, 1947.

XV. The acknowledgement of service of appeal papers specified in Rule 12 of the Revised Rules of the Supreme Court of the United States filed March —, 1947.

XVI. All statements of the appellants-appellees opposing the jurisdiction of the Supreme Court of the United States under Rule 12 of the Revised Rules of the Supreme Court of the United States.

XVII. This stipulation as to the contents of the record on appeal to the Supreme Court of the United States.

It is Further Stipulated that copies of any of the items designated herein for inclusion in the transcript may be furnished by the parties to the Clerk of this Court, together with a stipulation of the parties hereto that the same are true and correct copies of the originals on file in the office of said Clerk and may be by him certified to the Supreme Court of the United States as a part of the transcript on [fol. 320] appeal to said Court as true and correct copies, without comparison thereof with the originals. The Clerk of this Court is requested to transmit to the Clerk of the Supreme Court of the United States, Washington 13, D. C., only the matters designated herein.

The Public Service Commission of Indiana, Leroy E. Yoder, Lawrence E. Carlson, and Lawrence W. Cannon, as members of The Public Service Commission of Indiana, Appellants-Appellees by (S.) Cleon Foust, Attorney General of Indiana. Indiana Gas & Water Company, Inc., Central Indiana Gas Company, Northern Indiana Public Service Company, Kokomo Gas & Fuel Company, Southern Indiana Gas & Electric Company, Greenfield Gas Company, Inc., by (signed) W. P. Evans, Attorneys for above-named Appellants-Appellees. Panhandle Eastern Pipe Line Company, by Alan W. Boyd. (Signed) John L. S. Yost, (Signed) Samuel H. Riggs, Attorneys for Appellee-Appellant Panhandle Eastern Pipe Line Company.

The above and foregoing stipulation as to the contents of the record on appeal to the Supreme Court of the United States is hereby approved as conforming to the order heretofore entered allowing said appeal this 25th day of March, 1947.

(Signed) Frank E. Gilkison, Chief Justice of the Supreme Court of Indiana.

[fol. 321] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 322] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED ON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed April 22, 1947

Comes now the appellant in the above styled cause and adopts its assignment of errors as its statement of points to be relied on and states that the entire record in this cause, as filed in this Court, is necessary for the consideration of the foregoing points, and that the entire transcript of record as transmitted by the Clerk of the Supreme Court of Indiana should be printed by the Clerk of this Court.

John S. L. Yost, Counsel for the Appellant.

Service acknowledged this 17th day of April, 1947.

Cleon H. Foust, Attorney General of Indiana, Counsel for the appellee, The Public Service Commission of Indiana and LeRoy A. Yoder et al. as Members thereof. William P. Evans, Counsel for the Appellees other than The Public Service Commission of Indiana and LeRoy A. Yoder et al. as Members thereof.

William P. Evans, Counsel for the Appellees other than The Public Service Commission of Indiana and LeRoy A. Yoder et al as Members thereof.

[fol. 322a]

[File endorsement omitted]

[fol. 323] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—May 19, 1947

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Douglas took no part in the consideration or decision of this question.

Endorsed on cover: Enter John S. L. Yost. File No. 52,126, Indiana, Supreme Court, Term No. 1262. Panhandle Eastern Pipe Line Company, Appellant, vs. The Public Service Commission of Indiana, et al. Filed April 18, 1947. Term No. 1262 O. T. 1946.

(1161)